

PM to conserve energy. The technical rationale for this strategy is typically based on the recommendations of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) in their Standard 62-1989 titled "Ventilation for Acceptable Indoor Air Quality". Section 6.1.3.4 and Appendix "G" of ASHRAE Standard 62-1989 [Ex. 4-333] offers a rationale for the lead/lag operation of ventilation systems to accommodate transient occupancy. The basis for the rationale is that there is capacity in air to dilute contaminants if the space has been previously unoccupied for several hours. This strategy, however, applies only to occupant generated contaminants like carbon dioxide and odors. Housekeeping cleaning agents or pesticides are typical of contaminants that may be released which could not be absorbed by a non-ventilated space. Consequently, other contaminants must be diluted/removed by the ventilation system whenever the building is occupied. In addition, it is recognized that certain automatic temperature control strategies can also prevent a facility from receiving the minimum outside air ventilation rate. The obvious example is the early morning warm-up cycle wherein the outside air dampers are kept shut in the morning until the space temperature recovers from the setback temperature of the night before. These energy conservation and temperature control strategies must not interfere with providing minimum outside air ventilation when the building is occupied.

Paragraph (d) (4) proposes to require the employer to utilize general or local exhaust ventilation, as provided by the existing HVAC system or auxiliary systems, to minimize the hazards associated with maintenance or housekeeping activities. The

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literature reports IAQ/BRI episodes that were initiated with activities like painting, carpet cleaning and floor resurfacing. If these activities occur during unoccupied periods then chemical vapors from paints and adhesives and excessive moisture from carpet cleaning may be diluted and removed by the outside air ventilation function of the HVAC system. During occupied periods, efforts should be made to restrict transportation of hazardous contaminants from these activities throughout the facility by the HVAC air distribution system.

Paragraph (d) (5) proposes to require the employer to maintain occupied space relative humidities below 60% in buildings with mechanical cooling systems. Moisture in a building may support and amplify microbial contamination with potential for aerosolization. Both the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) in their Standard 62-1989 titled "Ventilation for Acceptable Indoor Air Quality", section 5.11 [Ex. 4-333] and the American Conference of Governmental Industrial Hygienists (ACGIH) in their 1989 "Guidelines for the Assessment of Bioaerosols in the Indoor Environment" [Ex. 3-61] recommend that relative humidity in the occupied space be maintained below 60%.

OSHA is inviting comments on whether a relative humidity of 60% is the appropriate upper limit to inhibit microbial growth or if a higher limit is appropriate. In addition, OSHA would like comment on whether there should be a lower level of relative humidity as recommended by ASHRAE and ACGIH to reduce irritation effects due to low relative humidity. And finally, OSHA would

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like additional comment on whether it is feasible in hot and humid climates to achieve relative humidities of 60% or less.

Paragraph (d) (6) proposes to require the employer to monitor for carbon dioxide (CO₂) in the occupied space as part of maintenance or employee complaint investigations. When the concentration exceeds 800 ppm, the employer would be required to check the operation of the HVAC system. CO₂ is frequently used as a gross surrogate indicator of indoor air quality. Ideally, by knowing the rate of accumulation of CO₂ in the space and the rate of generation of CO₂ by respiring occupants in the space, it would be possible to predict the rate of removal of CO₂ from the space by the HVAC system. Because buildings have average occupant densities to generate CO₂, the concentration is an indicator of the HVAC system's ability to dilute and remove occupant generated contaminants like CO₂, water vapor, and odors (human bioeffluents). However, the CO₂ concentration and the associated outside air ventilation rate offers no confidence as to the adequacy of dilution and removal of other contaminants released in the space. If the outside air ventilation rate is insufficient to dilute and remove CO₂, then it can be assumed that other contaminant concentrations will also be elevated. The literature reports that CO₂ concentrations in the space under 800 ppm will minimize health-related complaints [Exs. 3-34A, 4-331].

Paragraph (d) (8) proposes to require the employer to restrict the presence of hazardous substances in air distribution systems. The HVAC air distribution system itself should not be the source of hazardous contaminants due to its' critical nature as a potential pathway to building occupants. Enclosed ducts are

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typically not used to store hazardous substances but non-ducted air transport pathways such as area-ways, plenums, chases, corridors, and mechanical rooms serving as return air plenums are sometimes used for storage. If these air transport pathways are used for storage, then the employer must be especially careful to make sure that no spillage or leakage of hazardous substances occurs. This will insure that the pathways are kept free of hazardous substances.

Paragraph (d) (11) proposes to require that employees working on building systems are provided with and use personal protective equipment (PPE) as required by other OSHA standards including; 29 CFR 1926, Subpart E, Personal Protective and Life Saving Equipment; 29 CFR 1926.52, Occupational Noise Exposure; 29 CFR 1910, Subpart I, Personal Protective Equipment; and 29 CFR 1910.95 Occupational Noise Exposure.

OSHA is aware, through its experience and through the literature and submissions to the docket, that HVAC Operations and Maintenance (O&M) personnel may often receive minimal training regarding existing relevant OSHA regulations and the hazards that they are exposed to in the performance of their duties. Sometimes, facilities are not viewed as industrial workplaces by either the management or employees. However, the hazards do exist and therefore compliance with existing regulations is necessary to protect the health and safety of O&M employees. Respirators may not normally be used in this industry due to the perceived lack of a substance-specific hazard. But situations may occur, for instance, such as chemical

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or microbial contamination, that would require compliance with 1910.134.

Other provisions of this section require; that buildings without mechanical ventilation be operated and maintained to provide natural ventilation; that inspections and maintenance of building systems be performed by or under the supervision of the designated person; that the employer establish a written record of building system inspections and maintenance required under this section; that the employer evaluate the need to perform modifications to the building systems to meet the minimum requirements specified in paragraph (d) of this section in response to employee complaints of building-related illnesses.

Controls for specific contaminant sources: Paragraph (e)

This paragraph proposes to require employers to take specific protective measures to control employee exposure to specific agents such as tobacco smoke [Exs. 3-7, 3-10, 3-85, 3-291, 3-305, 3-409, 3-449, 3-496, 3-505B], outdoor pollutants [Ex. 3-496, 3-500, 3-502, 3-505], contaminant emissions from local indoor sources [Exs. 3-10, 3-17, 3-26, 3-38, 3-412], microbial contaminants [Exs. 3-10, 3-26, 3-61, 3-496, 3-500, 3-502, 3-505, 3-506], hazardous chemicals including cleaning and maintenance chemicals and pesticides [Exs. 3-56, 3-436, 3-496, 3-500, 3-505].

With respect to tobacco smoke in workplaces where smoking is not prohibited, paragraph (e)(1) proposes to require the establishment of designated smoking areas. Such areas must be enclosed and exhausted directly to the outside, and maintained

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under negative pressure sufficient to contain tobacco smoke within the designated area. Smoking is not permitted during cleaning and maintenance work in these designated smoking areas. Moreover, although cleaning and maintenance are specified in this paragraph, it is OSHA's intent that no work of any kind shall be performed in a designated smoking area when smoking is taking place. Designated smoking areas must be areas where employees do not have to enter in the performance of normal work activities. Signs must also be posted at designated smoking areas. Signs must be posted to inform anyone entering the building that smoking is restricted to designated areas. Finally, smoking within designated areas, is not permitted during any time that the exhaust ventilation system servicing that area is not operating properly.

The proposed provisions under paragraph (e) (1) addressing control of tobacco smoke are intended to ensure that employees outside of the designated smoking area will not be exposed to ETS. The Agency anticipates that the provisions as proposed will accomplish that goal. Enclosing smoking areas, exhausting them to the outside, maintaining them under negative pressure, and prohibiting smoking in designated areas even when the exhaust system is inoperable are believed to be necessary and sufficient to prevent tobacco smoke from migrating to other areas of the building.

The designated smoking area must be under negative pressure compared to all surrounding spaces including adjoining rooms, corridors, plenums and chases. Negative pressure is achieved by exhausting more air from the space than is supplied to the space.

Transfer air must enter the designated smoking room to make-up the volumetric flowrate differential between supply and exhaust air. It may be necessary to provide a tight architectural enclosure so as to achieve negative pressure and containment.

Leakage through a lay-in ceiling tile system may occur if there is a return air plenum above it. Negative pressure will induce airflow into the room through the entrance door undercut.

Containment may be checked by using smoke-trails at the door undercut to verify direction of airflow.

Contaminated exhaust air from a designated smoking room must be transported to the outside through exhaust ducts under negative pressure to avoid duct leakage into nonsmoking areas that the duct passes through.

The provisions regarding posting of signs are intended to prevent inadvertent entry into smoking areas, and inadvertent smoking in areas other than designated smoking areas. To prevent involuntary exposure, designated smoking areas cannot be areas where employees perform normal work activities. For the same reason, smoking is not permitted in smoking areas during performance of work activities such as cleaning and maintenance of the designated smoking area.

This provision will have special impact on establishments such as bars and restaurants. OSHA invites comments on feasibility considerations relative to such establishments and suggestions for alternative ways to assure that nonsmoking workers will not be exposed to tobacco smoke there.

Proposed paragraph (e)(2) establishes requirements dealing with outdoor air pollutants and contaminants emitted locally

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within workspaces. This paragraph proposes to require the employer to implement measures to restrict the entry of outdoor air pollutants into the building and to control local indoor sources of air contaminant emissions by employing other control measures like substitution or local source capture exhaust ventilation.

Proposed paragraph (e)(3) proposes to require the control of microbial contamination by routinely inspecting for and repairing water leaks that can promote growth of biologic agents, by promptly drying, replacing, removing, or cleaning damp or wet materials; and by taking measures to remove visible microbial contamination in ductwork, humidifiers, other HVAC system components, or on other building surfaces.

Proposed paragraph (e)(4) addresses the use of cleaning and maintenance chemicals, pesticides and other hazardous chemicals. Pesticides must be used according to manufacturers' recommendations, and where chemicals are to be used, employees in those areas affected are to be informed, at least within 24 hours prior to use, of the type of chemical to be applied.

The provisions proposed under (e)(2) are intended to ensure that indoor air quality is not degraded as a result of entry of outdoor contaminants, such as vehicle exhaust, or by circulation of contaminants generated within the building. The Agency believes that, where necessary, entry of outdoor air pollutants can be restricted by eliminating or repositioning entry points into the building.

Indoor local contaminant emissions can be minimized where necessary, through application of control measures such as source

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substitution and engineering controls that may include local source capture exhaust ventilation. Collection of contaminants at their source of emission through engineering controls is an accepted basic principle of industrial hygiene. Equipment and processes which are located or take place in areas that may lead to contamination of other areas should be provided with engineering controls, where necessary and feasible.

The provisions proposed in paragraph (e) (3) are intended to limit the opportunity for microbiological contamination of building systems and structures. Although individual microbes are not visible to the naked eye, colonies of microbes are. Moisture can lead to microbiological growth in indoor spaces, within HVAC systems, or within building structures, and thus to a variety of detrimental health effects. The employer therefore, is required to take preventive and corrective actions to minimize microbiological growth. Preventive action includes routine inspection for biological growth, with required corrective actions such as repairing water leaks, drying, replacing, or cleaning wet materials, and removal of visible microbiological growth [Exs. 3-61, 3-502].

The provisions proposed in paragraph (e) (4) are intended to restrict indoor exposure to hazardous substances such as pesticides and chemicals used for cleaning and maintenance purposes. The Agency believes that proper use of such substances is important to limit incidental exposures to those performing cleaning and maintenance as well as to other employees who might be incidentally exposed. Manufacturers recommendations for use of these products often address aspects of ventilation, employee

protection, occupancy limitations, and other protective measures. Thus, the Agency has proposed to require that chemicals covered under this paragraph must be used in accordance with manufacturer's recommendations. To further limit the potential for incidental exposures to these chemicals the standard proposes to require that employees in areas to be treated by such chemicals are to be notified within at least 24 hours prior to their application.

Air quality during renovation and remodeling: Paragraph (f)

Paragraph (f)(1) proposes to require implementation of specific procedures to minimize degradation of air quality during renovation and remodeling activities [Exs. 3-26, 3-38, 3-444B].

Paragraph (f)(2) proposes to require development and implementation of a work plan to restrict entry of air contaminants into other work areas during remodeling, renovation, and similar activities [Ex. 3-444b]. Where appropriate, elements of the workplan to be considered are requirements of this standard, implementation of means to assure that HVAC systems continue to function effectively during remodeling and renovation activities, isolation or containment of work areas and appropriate negative pressure containment, air contaminant suppression controls or auxiliary air filtration, and controls to prevent air contaminant entry into HVAC systems. Finally, paragraph (e)(3), proposes to require 24 hour advance notification of employees, or promptly in emergency situations, of work to be performed on the building that may introduce air contaminants into their work area. Such notification must

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include anticipated adverse impacts on indoor air quality or workplace conditions.

The provisions under proposed paragraphs (f)(1) and (f)(2) are intended to ensure that renovation, remodeling and similar activities are performed in a manner that will reduce the potential for air contaminants generated during those activities from entering other areas of the building. Such activities which may involve demolition, sanding, surface refinishing, component removal and replacement, etc. can result in hazardous substance emission from solvents, paints, carpets, etc. and can also produce high levels of particulate contamination. To control such emissions, the standard proposes to require employers to develop a workplan for the implementation of appropriate work procedures and controls such as exhaust ventilation, isolation, containment, or use of wet methods during renovation and remodeling activities.

Finally, paragraph (f)(3) proposes to require notification of employees in the vicinity of renovation and remodeling activities who may be subject to incidental exposure to emissions produced during such activities [Ex. 3-444B]. This notification must also apprise affected employees of the potential adverse impact on air quality. Informing employees of potential workplace hazards is felt by the Agency to be imperative for the success of any safety and health program. OSHA believes that employees can do much to protect themselves if they are informed of the nature of the hazards to which they are exposed.

Employee information and training: Paragraph (g)

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Paragraph (g) proposes to require employers to provide special training for workers involved in maintenance activities and those involved in HVAC system operations, and to provide certain pertinent information to all employees.

Paragraph (g)(1) proposes to require that maintenance and HVAC operations personnel be trained in the use of personal protective equipment (PPE) required to be worn; training on how to maintain adequate ventilation of exhaust fumes during building cleaning and maintenance; and training of maintenance personnel on how to minimize adverse effects on indoor air quality during the use and disposal of chemicals and other agents [Exs. 3-26, 3-38, 3-41, 3-347, 3-415, 3-434, 3-440, 3-444B, 3-500, 3-502].

Paragraph (g)(2) proposes to require that all employees shall be informed of the contents of the standard and its appendices, signs and symptoms associated with building-related illness, and the requirement under proposed subparagraphs (d)(12) and (d)(13) which directs the employer to evaluate the effectiveness of the building systems, if necessary, upon receipt of complaints from employees of building-related illness [Exs. 3-38, 3-347, 3-412, 3-415, 3-434, 3-444B, 3-500, 3-529]. The information proposed to be provided under this subparagraph need not be conveyed to employees through formal training sessions or courses. Informing employees can be accomplished, for example, through written means such as fact sheets, memos, or posted bulletins. OSHA will provide in a non-mandatory appendix to the final rule an example illustrating what information is to be provided to employees.

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Paragraph (g) (3) proposes to require that the employer make training materials developed under these provisions, including the standard and its appendices, available for inspection and copying by employees, designated employee representatives, the Director, and the Assistant Secretary.

Training and information requirements are routine components of OSHA health standards. The inclusion of training and information requirements reflects the Agency's conviction, as noted above, that informed employees are essential to the operation of any effective health program. OSHA believes that informing and training employees about the hazards to which they are exposed will contribute substantially to reducing the incidence of diseases caused by workplace conditions. Further, as noted earlier, it has been OSHA's experience that unacceptable indoor air quality is often the result of deficiencies in implementing effective HVAC system operation and maintenance programs. The Agency believes that specialized training of workers performing those activities is, therefore, necessary to ensure successful performance of their jobs.

Recordkeeping: Paragraph(h)

Paragraph (h) proposes to require that employers maintain records of: all written information regarding the IAQ compliance program required to be established under paragraph (c); inspection and maintenance records required to be established under paragraph (d) [Ex. 3-26], which must include the specific remedial or maintenance actions taken, the name and affiliation of the individual performing the work, and the date of the

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inspection or maintenance activity; and records of employee complaints of building-related illness required to be established under paragraph (c)(5) of this section [Ex. 3-502].

Paragraph (h) also proposes to require the employer to retain these for at least the previous three years [Ex. 3-502], except that operation, maintenance, inspection, and compliance program records need not be retained for three years if rendered obsolete by the establishment and replacement of more recent records, or rendered irrelevant due to HVAC system replacement or redesign. The records required to be maintained by the employer are to be made available to employee's and their designated representative and the Assistant Secretary for examination and copying.

Finally, paragraph (h)(6) proposes to require that whenever the employer ceases to do business records that are required to be maintained by the employer are to be provided to and retained by the successor employer [Ex. 3-440B].

Section 8(c) of the Act authorizes OSHA to require employers to make, keep, and preserve, and make available to the Secretary or the Director records regarding their activities as prescribed by regulation as appropriate and necessary for the enforcement of the Act or for developing information regarding the causes and prevention of occupational illnesses. As noted earlier, the Agency believes that development of written compliance plans are essential to implementation of a successful IAQ program. The written compliance program, inspection and maintenance records, and operator and maintenance schedules which are required to be established under the proposal, are required

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to be retained under this paragraph. This information essentially documents the desired performance levels of HVAC systems, and the measures necessary to maintain those levels of performance, as well as other measures which should be followed to ensure acceptable indoor air quality. Such data must be available for use by designated persons, current employers, successor employers, and employees as a blueprint for program implementation. Without such data, air quality problems would likely arise due to ignorance of such elements as design occupant densities, equipment schedules, maintenance requirements and frequencies, etc. Records required to be established in response to employee complaints of building-related illness are also required to be retained under this paragraph. Such complaints require the employer to evaluate the need for, and to take if necessary, remedial action to correct observed problems [Ex. 3-1, 3-444B]. Information regarding employee illness is essential in identifying causal factors and trends in adverse health effects. Retention of this health data will aid in the recognition, evaluation and correction of indoor air quality deficiencies which lead to building-related illnesses. Records of building-related illness are proposed to be required to be retained for at least the previous 3 years. OSHA believes that requiring record retention for 3 years of building-related illnesses which occur in nonindustrial environments is reasonable. Such illnesses are not viewed in the same context as industrial illnesses which may be associated with long latency periods, and thus necessitate very long retention periods for health records. Establishment and maintenance of building-related illness records is primarily

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for the purpose of documenting indoor air quality degradation, so that corrective action can be taken. Requiring records to be retained to preserve a 3 year history of building-related illness, is proposed as being reasonable to aid in the tracking of air quality trends and past experiences [Ex. 3-502].

Other records are also required to be retained for at least the previous 3 years, except to the extent they become obsolete. OSHA does not believe that records such as maintenance and operating schedules which become irrelevant due to HVAC system modification or replacement need be retained further. The records required to be retained under this paragraph must be transferred to successor employers. Since these records contain information specific to the building or facility, as opposed to specific employers, such records should be maintained within affected buildings for future use.

Dates: Paragraph (i)

Paragraph (i) proposes to establish an effective date for this standard of sixty (60) days from publication in the Federal Register. A start-up date one year from the effective date is proposed as an adequate period of time for employers to achieve full compliance with all provisions under the rule. The Agency believes that affected employers can develop and implement compliance programs, establish designated smoking areas if smoking is not prohibited, and train employees as proposed under the standard within a one year period from the effective date.

Appendices: Paragraph (j)

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The appendices included with this regulation are intended to be informational and, unless otherwise expressly stated in this section, are not intended to create any additional obligations not otherwise imposed, or to detract or reduce any existing obligations.

K. Specific Questions Posed

OSHA solicits data, views and comment on all provisions proposed in this notice. The Agency sets forth questions below to highlight specific areas in the proposal upon which comment is sought.

Regulatory Analysis Issues

(1) Are there any comments on the method used by OSHA to estimate benefits resulting from IAQ provisions of the proposed standard?

(2) Are there studies which document, in quantitative terms, the effectiveness of HVAC maintenance on the decline of indoor air related ailments?

(3) OSHA has estimated a substantial productivity benefit resulting from this proposed standard. What additional studies and other information are available that demonstrate any effect on productivity?

(4) OSHA has preliminarily determined that the direct costs of compliance with this standard will not unduly harm small entities. However, OSHA did not determine how the smoking restrictions in this regulation would affect demand, and therefore profitability, for establishments which provide

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services and commodities which would be affected by the proposal (e.g., restaurants and bars). OSHA requests comments, including empirical data regarding the demand elasticity of such establishments' patrons who will not be permitted to smoke in the presence of employees.

If economic feasibility is shown to be an issue for establishments such as bars and restaurants, what alternative feasible methods of compliance would prevent workers from being exposed to tobacco smoke?

What other workplaces have circumstances under which provisions of this standard may not be feasible?

(5) During renovation and remodelling, what are the specific elements for implementing control measures to minimize degradation of the IAQ of employees performing such activities and employees in other areas of the building? What are the unit costs associated with the implementation of each control (capital and labor)?

(6) Please describe practices in your workplace by providing answers to the following:

- describe the business, SIC code number and number of employees in the establishment.
- what type of ventilation systems are presently being used?
- If carbon dioxide monitoring is conducted, how often is it being done and by whom and what are the associated costs?
- Does your establishment have a policy on IAQ? When and why was it implemented? What are the major

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components? How many employees are affected? What type of costs and cost savings have been associated with such a policy (e.g., operating, maintenance, retrofitting HVAC systems, property damage due to poor IAQ, employee productivity, cleaning, etc.)?

- Is smoking allowed in your establishment? If yes, is it limited to designated smoking areas with separate ventilation?

Scope and application, paragraph (a)

(1) Is it necessary and feasible to extend coverage of the entire standard to industrial facilities as well as nonindustrial facilities? Why? Why not? Which provisions lend themselves to application to industrial environments?

(2) Can coverage of the standard feasibly be extended to some industrial facilities but not others? If so, what characteristics distinguish those workplaces in which it is feasible or necessary to apply the standard from those in which it is not?

(3) The regulation as drafted would require employers generally to prohibit smoking by their customers (such as in bars, restaurants, and stores) where not already banned by a government entity if employees would be exposed to ETS from customer smoking. Comment is requested on the appropriateness of this provision, possible alternatives, and feasibility issues.

Definitions, paragraph (b)

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(1) Is the proposed definition of "air contaminants" sufficiently descriptive to inform employers of the hazards which may adversely affect indoor air quality? If not, what additional information should be included in the definition? Which elements included in the definition are not reflective of hazards which affect indoor air quality?

Can employers reasonably be expected to be able to detect the presence of air contaminants, as defined, and determine whether they present a significant risk of material impairment of employee health? What methods are available to detect indoor air contaminants? What criteria should be used to evaluate the degree of risk that the presence of air contaminants pose to employees?

(2) Is the proposed definition of "building systems" sufficiently descriptive to indicate which systems the employer must attend to in order to assure acceptable indoor air quality? Are the systems listed in the definition those that directly affect indoor air quality? If not, why not? What other systems affect indoor air quality that are not specifically cited in the definition, and how do they influence indoor air quality? How must such systems be maintained and operated in order to assure adequate indoor air quality?

(3) Is the term "building-related illness" sufficiently descriptive and inclusive of the medical conditions that can arise from poor indoor air quality? If not, what other medical conditions should be addressed under the definition and why? Which conditions listed in the definition, if any, should not be considered as "building-related illness" and why?

(4) Is it necessary and appropriate to require employers to authorize a "designated person" to be responsible for ensuring compliance with an indoor air quality standard? Why? Why not? If it is appropriate to require a designated person, what training should designated persons have in order to carry out their responsibilities under the proposed rule? Should the designated person be a person who is a full-time employee who is within the facility each day? Should a designated person be on-site during each shift? Is it unreasonable to expect that due to the complexity of building systems, a single designated person within a facility can successfully oversee and ensure adequate operation of all building systems that affect indoor air quality? Why? Why not? Would it be beneficial for the designated person to receive an inventory of chemical and physical agents used by all employers on site in order to track chemical usage and storage? Information collected could include date of receipt, amount applied or used, where and when in the facility it was used, and how the remainder is stored.

(5) Does the definition of the term "HVAC system" identify all components of HVAC systems which can adversely affect indoor air quality if not properly operated and maintained? What other components should be included and why? What components designated in the definition do not affect indoor air quality and why?

(6) Is the definition of "nonindustrial work environment" sufficiently descriptive to differentiate them from industrial work environments? If not, what other descriptors should be included in the definition? Which types of facilities and

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establishments proposed under the definition as nonindustrial work environments should not be subject to this standard and why?

(7) Is the definition of "renovation and remodeling" appropriately descriptive of such activities? If not, what modifications to the definition would more reasonably reflect industry view of the characteristics of such activities?

Indoor Air Quality compliance program, paragraph (c)

(1) Is it necessary and appropriate to require employers to establish a written IAQ compliance program in order to assure the adequacy of indoor air quality in nonindustrial work environments? Why? Why not?

(2) If establishment of a written compliance program is necessary, are the informational elements proposed to be developed under this rule appropriate and why? What is their function for successful implementation of the program? Which other written material should be made part of the IAQ compliance program and why?

(3) Which informational elements proposed to be established as part of the IAQ program, if any, are irrelevant to successful building system operation and maintenance? Why?

(4) Which informational elements proposed to be established as part of the IAQ program, if any, are not generally available to the employer and why?

Compliance program implementation, paragraph (d)

(1) Which of the implementation actions proposed under this paragraph are necessary and appropriate for maintenance of

acceptable indoor air quality. Why? Which are not? Why not? In this regard, specific comment is particularly sought on the need for the following proposed elements of the implementation program:

- (a) Maintenance and operation of the HVAC system to provide at least a required minimum outside air ventilation rate;
- (b) Operation of the HVAC during all work shifts;
- (c) Use of exhaust ventilation during maintenance and housekeeping activities;
- (d) Maintenance of relative humidity to below 60%;
- (e) Requiring HVAC system evaluation where CO₂ levels exceed 800 ppm; and
- (f) Requiring building system evaluation in response to employee complaints of building related illness.
- (g) Should the regulation prohibit the storage of hazardous substances in air transport pathways serving as return air plenums? These areas may include area-ways, plenums, chases, corridors, and mechanical rooms serving as return air plenums.

Controls for specific contaminant sources, paragraph (e)

- (1) Will the proposed provisions addressing construction and operation of designated smoking areas assure that employees working outside designated areas will not be exposed to ETS? If so, which of the proposed provisions may be unnecessary to achieve this goal? If not, is it necessary to prohibit smoking within indoor workplaces to eliminate exposure to ETS or can the provisions as proposed be modified, or supplemented to prevent secondary exposure? If it is believed that designated smoking

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areas will effectively contain tobacco smoke, comment is particularly sought on the appropriateness of requiring designated smoking areas to be enclosed, exhausted directly to the outside and maintained under negative pressure.

(2) Is the proposed provision requiring the use of measures such as local source capture exhaust ventilation or substitution to control air contaminants emitted from point sources where general ventilation is inadequate, feasible or effective?

(3) Are the proposed provisions addressing control of microbial contamination effective, feasible, or necessary? Why? Why not? What additional provisions, if any, should be included to preclude microbial contamination for adversely affecting indoor air quality?

(4) Where hazardous chemicals are used in the workplace, including cleaning and maintenance chemicals, is employee notification of their use 24 hours prior to their application, as proposed, necessary to mitigate potential incidental exposure to such chemicals? To what extent does the use of such chemicals in nonindustrial environments present a health risk to other employees, or to the acceptability of indoor air quality? Which chemicals and their uses are of particular concern in non-industrial indoor environments?

(5) Are the proposed provisions specifically addressing renovation and remodeling activities necessary and appropriate and why? Particularly, are the proposed requirements to develop a work plan focusing special attention on HVAC systems, area isolation or containment, and air contaminant suppression controls necessary to limit the potential for degradation of air

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quality? Why? Why not? What other provisions, if any, should be included to limit the affects that renovation and remodeling activities may have on indoor environments?

Employee information and training, paragraph (g)

(1) Are the provisions proposing that building systems maintenance workers receive special training with respect to the use of personal protective equipment, use of ventilation during cleaning and maintenance activities, and on proper use and disposal of hazardous chemicals and other agents, necessary and appropriate to assure maintenance of acceptable indoor air quality? Why? Why not?

(2) Should training of building maintenance and systems workers include additional specific elements not proposed in this notice? What should this additional training consist of and why? Which workers should this training be provided to - all maintenance and building systems workers, supervisors, crew leaders? Should such training be provided periodically, or would initial training suffice?

(3) Is it necessary, as proposed, to require that all employees in the facility be informed of the contents of the standard and of signs and symptoms associated with building-related illness? Why? Why not?

Recordkeeping, paragraph (h)

(1) Will retention of records, as proposed, enhance the potential for reducing indoor air quality problems? Will retention of maintenance records, IAQ compliance program records,

and records of employee complaints serve as necessary documentation upon which actions and decisions can be made to improve deficiencies found in facility air quality? If so, how will these records serve that purpose?

(2) What length of time should the records required to be established under this proposal be required to be retained? Is OSHA's proposed 3-year retention period reasonable? Why? Why not? Should different retention periods be specified for each particular record, and if so, why?

(3) Is it reasonable to require transfer of records from an employee to a successor employer? What other mechanisms are available to ensure that the facility-specific records remain at the building or facility in the event of tenant turnover?

Dates, paragraph (i)

Is it feasible for employees to fully implement the provisions of this notice within one year of the effective date, as proposed? Why? Why not? If not, which provisions present difficulties, technologic or economic, with respect to implementation? For which provisions should implementation periods be either decreased or increased and why? To what extent should implementation periods be decreased or increased for particular provisions?

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VIII. STATE PLAN STANDARDS

The 25 states and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final standard. These 25 states are: Alaska, Arizona, California, Connecticut (for public employees only), New York (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

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IX. FEDERALISM

This Notice of Proposed Rulemaking has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of state law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' clear intent to preempt state laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a state can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Therefore states with occupational safety and health plans approved under Section 18 of the OSHA Act will be able to develop their own state standards to deal with any special problems which might be encountered in a particular state.

The proposed Federal standard on indoor air quality addresses hazards which are not unique to any one state or region of the country. In fact, OSHA recognizes that many state and local governments have enacted provisions addressing indoor air quality issues including the presence of ETS. Section 18(a) of

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the OSH Act requires preemption only of state laws that qualify as occupational safety and health standards, not of state laws of general applicability. It is OSHA's intent that state laws consistent with this standard remain in effect to the maximum extent permitted.

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X. INFORMATION COLLECTION REQUIREMENTS

5 CFR part 1320 sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. This proposed indoor air quality standard requires the employer to allow OSHA access to records. In accordance with the provisions of the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it has submitted the information collection requirements for this proposal to OMB for review under section 3504(h) of that Act.

Public reporting burden for this collection of information is estimated to average five minutes per response. Send any comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Avenue, NW., Washington, D.C. 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

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XI. PUBLIC PARTICIPATION

Interested persons are requested to submit written data, views and arguments concerning this proposal. Responses to the questions raised at various places in the proposal are particularly encouraged. These comments must be postmarked by (enter date 90 days after publication of this proposal in the Federal Register). Comments are to be submitted in quadruplicate or 1 original (hardcopy) and 1 disk (5 1/4 or 3 1/2) in WP 5.0, 5.1, 6.0 or Ascii. Note: Any information not contained on disk, e.g., studies, articles, etc., must be submitted in quadruplicate to: The Docket Office, Docket No. H-122, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone No. (202) 219-7894.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Notice of Intention to Appear at the Informal Hearing

Pursuant to section 6(b)(3) of the OSH Act, informal public hearings will be held on this proposal in Washington, D.C. from July 12 through July 26, 1994. If OSHA receives sufficient requests to participate in the hearing, the hearing period may be extended.

The hearing will commence at 9:30 a.m. in the auditorium of the Frances Perkins Building, U.S. Department of Labor, 3rd Street and Constitution Avenue N.W., Washington, D.C. 20210.

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Persons desiring to participate at the informal public hearing must file a notice of intention to appear by (75 days after date of publication in the Federal Register). The notice of intention to appear must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The issues that will be addressed;
5. A brief statement of the position that will be taken with respect to each issue; and
6. Whether the party intends to submit documentary evidence and, if so, a brief summary of it.

The notice of intention to appear shall be mailed to Mr. Thomas Hall, OSHA Division of Consumer Affairs, Docket No. H-122, U.S. Department of Labor, room N-3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219-8615.

A notice of intention to appear also may be transmitted by facsimile to (202) 219-5986, by the same date provided the original and 3 copies are sent to the same address and postmarked no later than 3 days later.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than ten (10) minutes for presentation at the informal public hearing, or who intends to submit documentary evidence, must provide in quadruplicate the testimony and evidence to be presented at the informal public

hearing. One copy shall not be stapled or bound and be suitable for copying. These materials must be provided to Mr. Thomas Hall, OSHA Division of Consumer Affairs at the address above and be postmarked no later than (90 days after date of publication in the Federal Register).

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the informal public hearing.

Any party who has not substantially complied with the above requirement may be limited to a ten-minute presentation and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notice of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office at the address above.

Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m. on the first day. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal rulemaking hearing is established in the legislative history of section 6 of the OSH Act and is

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reflected by OSHA's rules of procedure for hearings (29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the proceeding is informal and legislative in type. The Agency's intent, in essence, is to provide interested persons with an opportunity to make effective oral presentations which can proceed expeditiously in the absence of procedural restraints which impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding rather than an adjudicative one. The technical rules of evidence, for example do not apply. The regulations that govern hearings and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR Part 1911. It should be noted that §1911.4 specifies the Assistant Secretary may upon reasonable notice issue alternatives procedures to expedite proceedings or for other good cause. The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will

have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911 including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentations to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and
6. In the Judge's discretion, to keep the record open for a reasonable, stated time (known as the post-hearing comment period) to receive written information and additional data, views and arguments from any person who has participated in the oral proceedings.

OSHA recognizes that there may be interested persons or organizations who, through their knowledge of the subject matter or their experience in the field, would wish to endorse or support the whole proposal or certain provisions of the proposal. OSHA welcomes such supportive comments, including any pertinent data and cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

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XII. List of Subjects in 29 CFR Part 1910

Indoor Air Quality, Occupational Safety and Health.

XIII. Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210. Pursuant to sections 6(b) and 8(c) and 8(g)(2) of the Act, OSHA hereby proposes to amend 29 CFR by adding a new § 1910.1033, 1915.1033, 1926.1133 and revising of § 1910.19 and 1928.21 as set forth below.

Signed at Washington, D.C., this ____ day of _____, 199__.

Joseph A. Dear,

Assistant Secretary for Occupational Safety and Health.

Part 1910, 1915, 1926, and 1928 of title 29 of the Code of Federal Regulation (CFR) are hereby proposed to be amended as follows:

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XIV. STANDARDS

PART 1910, 1915, 1926 [AMENDED] -- OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart B of Part 1910 would continue to read as follows:

AUTHORITY: Secs. 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35 et seq; Service Contract Act of 1965, 41 U.S.C. 351 et seq; sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333; sec. 41, Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 942; National Foundation of Arts and Humanities Act, 20 U.S.C. 951 et seq; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 1911), 9-83 (48 FR 35736), or 1-90 (55 FR 9033), as applicable.

2. The authority citation for subpart Z of Part 1910 would continue to read as follows:

AUTHORITY: Secs. 6, 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 1911), 9-83 (48 FR 35736), or 1-90 (55 FR 9033), as applicable; and 29 CFR 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances which have exposure limits listed in Tables Z-1, Z-2, and Z-3 of 29 CFR 1910.1000. The latter were issued under Section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z-1, Z-2, and Z-3 also issued under 5 U.S.C. 533. Section 1910.1000, Tables Z-1, Z-2, and Z-3

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were not issued under 29 CFR 1911 except for the arsenic (organic compounds), benzene and cotton dust listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Section 1910.1025 also issued under 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Sections 1910.1200, 1910.1499, and 1910.1500 also issued under 5 U.S.C. 553.

3. The authority citation for part 1915 would continue to read as follows.

AUTHORITY: Sec. 41, Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); secs. 4, 6, 8 Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); sec. 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable; 29 CFR Part 1911.

4. The authority citation for subpart Z of Part 1926 would be revised to read as follows:

AUTHORITY: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 6, 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 1911), 9-83 (48 FR 35736), or 1-90 (55 FR 9033), as applicable; and 29 CFR 1911.

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Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 653.

Section 1926.1103 through 1926.1118 also issued under 29 U.S.C. 653.

Section 1926.1128 also issued under 29 U.S.C. 653.

Section 1926.1145 and 1926.1147 also issued under 29 U.S.C. 653.

Section 1926.1148 also issued under 29 U.S.C. 653.

5. Section 1910.19 of subpart B of part 1910 is proposed to be amended by adding a paragraph (1) to read as follows:

§ 1910.19 Special provisions for air contaminants

* * * * *

(1) Indoor air quality. Section 1910.1033 shall apply to the exposure of every employee in every employment covered by section 1910.16.

6. Subpart Z of Parts 1910, 1915, 1926 of Title 29 of the Code of Federal Regulations is proposed to be amended by adding identical new sections as 1910.1033, 1915.1033 and 1926.1133 to read as follows:

§ *****.***** Indoor Air Quality.

(a) Scope and application. (1) The provisions set forth in this section apply to all nonindustrial work environments.

(2) The provisions set forth in paragraph (e)(1) of this section, which address employee exposure to tobacco smoke, apply to all indoor or enclosed workplaces under OSHA jurisdiction.

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(b) Definitions

Air contaminants refers to substances contained in the vapors from paint, cleaning chemicals, pesticides, and solvents, particulates, outdoor air pollutants and other airborne substances which together may cause material impairment to employees working within the nonindustrial environment.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Building-Related Illness describes specific medical conditions of known etiology which can be documented by physical signs and laboratory findings. Such illnesses include sensory irritation when caused by known agents, respiratory allergies, asthma, nosocomial infections, humidifier fever, hypersensitivity pneumonitis, Legionnaires' disease, and the signs and symptoms characteristic of exposure to chemical or biologic substances such as carbon monoxide, formaldehyde, pesticides, endotoxins, or mycotoxins.

Building systems include but are not limited to the heating, ventilation and air-conditioning (HVAC) system, the potable water systems, the energy management system and all other systems in a facility which may impact indoor air quality.

Designated person means a person who has been given the responsibility by the employer to take necessary measures to assure compliance with this section and who is knowledgeable in the requirements of this standard and the specific building systems servicing the affected building or office.

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Designated smoking area means a room, in a non-work area, in which smoking of tobacco products is permitted.

Director means the Director, National Institute for Occupational Safety and Health (NIOSH) U.S. Department of Health and Human Services or designee.

Employer means all persons defined as employers by Sec. 3(5) of the Occupational Safety and Health Act of 1970 including employers (such as building owners or lessees) who control the ventilation or maintenance of premises where employees of other employers work.

HVAC system means the collective components of the heating, ventilation and air-conditioning system including, but not limited to, filters and frames, cooling coil condensate drip pans and drainage piping, outside air dampers and actuators, humidifiers, air distribution ductwork, automatic temperature controls, and cooling towers.

Nonindustrial work environment means an indoor or enclosed work space such as, but not limited to, offices, educational facilities, commercial establishments, and healthcare facilities, and office areas, cafeterias, and break rooms located in manufacturing or production facilities used by employees. Non-industrial work environments do not include manufacturing and production facilities, residences, vehicles, and agricultural operations.

Renovation and remodeling means building modification involving activities that include but are not limited to: removal or replacement of walls, ceilings, floors, carpet, and components such as moldings, cabinets, doors, and windows; painting,

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decorating, demolition, surface refinishing, and removal or cleaning of ventilation ducts.

(c) Indoor air quality (IAQ) compliance program

(1) All employers with workplaces covered by paragraph

(a) (1) of this section shall establish a written IAQ compliance program.

(2) The employer shall identify a designated person who is given the responsibility to assure implementation of the IAQ compliance program.

(3) Written plans for compliance programs shall include at least the following:

(i) A written narrative description of the facility building systems;

(ii) Single-line schematics or as-built construction documents which locate major building system equipment and the areas that they serve;

(iii) Information for the daily operation and management of the building systems, which shall include at least a description of normal operating procedures, special procedures such as seasonal start-ups and shutdowns, and a list of operating performance criteria including, but not limited to minimum outside air ventilation rates, potable hot water storage and delivery temperatures, range of space relative humidities, and any space pressurization requirements.

(iv) A general description of the building and its' function including but not limited to, work activity,

number of employees and visitors, hours of operation, weekend use, tenant requirements and known air contaminants released in the space;

(v) A written maintenance program for the maintenance of building systems which shall be preventive in scope and reflect equipment manufacturer's recommendations and recommended-good-practice as determined by the building systems maintenance industry. At a minimum, the maintenance program shall describe the equipment to be maintained, and establish maintenance procedures and frequency of performance.

(vi) A checklist for the visual inspection of building systems.

(4) The following additional information, if available, shall be retained by the employer to assist in potential indoor air quality evaluations:

(i) As-built construction documents;

(ii) HVAC system commissioning reports;

(iii) HVAC systems testing, adjusting and balancing reports;

(iv) Operations and maintenance manuals;

(v) Water treatment logs; and

(vi) Operator training materials

(5) The employer shall establish a written record of employee complaints of signs or symptoms that may be related to building-related illness to include at least information on the nature of the illness reported, number of employees affected, date of employee

complaint, and remedial action, if any, taken to correct the source of the problem.

(d) *Compliance program implementation* . Employers shall assure compliance with this section by implementing at least the following actions:

- (1) Maintain and operate the HVAC system to assure that it operates up to original design specifications and continues to provide at least the minimum outside air ventilation rate, based on actual occupancy, required by the building code, mechanical code, or ventilation code applicable at the time the facility was constructed, renovated, or remodeled, whichever is most recent;
- (2) Conduct building systems inspections and maintenance in accordance with paragraph (c);
- (3) Assure that the HVAC system is operating during all work shifts, except during emergency HVAC repairs and during scheduled HVAC maintenance;
- (4) Implement the use of general or local exhaust ventilation where housekeeping and maintenance activities involve use of equipment or products that could reasonably be expected to result in hazardous chemical or particulate exposures to employees working in other areas of the building or facility;
- (5) Maintain relative humidity below 60% in buildings with mechanical cooling systems;
- (6) The employer shall monitor carbon dioxide levels when routine maintenance under paragraph (d)(1) is done. When the carbon dioxide level exceeds 800 ppm, the employer shall

check to make sure the HVAC system is operating as it should. If it is not, the employer shall take necessary steps to correct deficiencies if they exist.

(7) Assure that buildings without mechanical ventilation are maintained so that windows, doors, vents, stacks and other portals designed or used for natural ventilation are in operable condition;

(8) Assure that mechanical equipment rooms and any non-ducted air plenums or chases that transport air are maintained in a clean condition, hazardous substances are properly stored to prevent spillage, and asbestos, if friable, is encapsulated or removed so that it does not enter the air distribution system;

(9) Assure that inspections and maintenance of building systems are performed by or under the supervision of the designated person;

(10) Establish a written record of building system inspections and maintenance required to be performed under this section; and

(11) Assure that employees performing work on building systems are provided with and use appropriate personal protective equipment as prescribed in 29 CFR 1926, Subpart E, Personal Protective and Life Saving Equipment; 29 CFR 1926.52, Occupational Noise Exposure; 29 CFR 1910, Subpart I, Personal Protective Equipment; and 29 CFR 1910.95 Occupational Noise Exposure.

(12) Evaluate the need to perform alterations of the building systems to meet the minimum requirements specified

in paragraph (d) of this section in response to employee complaints of building-related illnesses.

(13) Take such remedial measures as the evaluation shows to be necessary.

(e). *Controls for specific contaminant sources.*

(1) *Tobacco smoke.*

(i) In workplaces where the smoking of tobacco products is not prohibited, the employer shall establish designated smoking areas and permit smoking only in such areas;

(ii) The employer shall assure that designated smoking areas are enclosed and exhausted directly to the outside, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area;

(iii) The employer shall assure that cleaning and maintenance work in designated smoking areas is conducted only when no smoking is taking place;

(iv) The employer shall assure that employees are not required to enter designated smoking areas in the performance of normal work activities;

(v) The employer shall post signs clearly indicating areas that are designated smoking areas; and

(vi) The employer shall post signs that will clearly inform anyone entering the workplace that smoking is restricted to designated areas.

(vii) The employer shall prohibit smoking within designated smoking areas during any period that the

exhaust ventilation system servicing that area is not properly operating.

(2) *Other indoor air contaminants.*

(i) The employer shall implement measures such as the relocation of air intakes and other pathways of building entry, where necessary, to restrict the entry of outdoor air contaminants such as vehicle exhaust fumes, into the building;

(ii) When general ventilation is inadequate to control air contaminants emitted from point sources within workspaces the employer shall implement other control measures such as local source capture exhaust ventilation or substitution.

(3) *Microbial contamination.*

(i) The employer shall control microbial contamination in the building by routinely inspecting for, and promptly repairing, water leaks that can promote growth of biologic agents;

(ii) The employer shall control microbial contamination in the building by promptly drying, replacing, removing, or cleaning damp or wet materials; and

(iii) The employer shall take measures to remove visible microbial contamination in ductwork, humidifiers, other HVAC and building system components, or on building surfaces when found during regular or emergency maintenance activities or during visual inspection.

(4) Use of cleaning and maintenance chemicals, pesticides, and other hazardous chemicals in the workplace.

(i) The employer shall assure that these chemicals are used and applied according to manufacturers' recommendations; and

(ii) The employer shall inform employees working in areas to be treated with potentially hazardous chemicals, at least within 24 hours prior to application, of the type of chemicals intended to be applied.

(f) Air quality during renovation and remodeling.

(1) General. During renovation or remodeling, the employer shall assure that work procedures and appropriate controls are utilized to minimize degradation of the indoor air quality of employees performing such activities and employees in other areas of the building.

(2) Work plan development.

(i) Before remodeling, renovation, or similar activities are begun the employer shall meet with the contractor or individual(s) performing the work and shall develop and implement a work plan designed to minimize entry of air contaminants to other areas of the building during and after performance of the work; and

(ii) The work plan shall consider all of the following where appropriate:

(A) Requirements of this standard.

(B) Implementation of means to assure that HVAC systems continue to function effectively during remodeling and renovation activities.

(C) Isolation or containment of work areas and appropriate negative pressure containment;

(D) Air contaminant suppression controls or auxiliary air filtration/cleaning.

(E) Controls to prevent air contaminant entry into the HVAC air distribution system.

(3) Prior notification of employees who work in the building.

(i) The employer shall notify employees at least 24 hours in advance, or promptly in emergency situations, of work to be performed on the building that may introduce air contaminants into their work area;

(ii) Notification shall include anticipated adverse impacts on indoor air quality or workplace conditions.

(g) Employee information and training.

(1) The employer shall provide training for maintenance workers and workers involved in building system operation and maintenance which shall include at least the following:

(i) Training in the use of personal protective equipment (PPE) needed in operating and maintaining building systems;

(ii) Training on how to maintain adequate ventilation of air contaminants generated during building cleaning and maintenance; and

- (iii) Training of maintenance personnel on how to minimize adverse effects on indoor air quality during the use and disposal of chemicals and other agents.
- (2) *All employees shall be informed of:*
- (i) The contents of this standard and its appendices; and
- (ii) Signs and symptoms associated with building-related illness and the requirement under subparagraphs (d)(12) and (d)(13) of this section directing the employer to evaluate the effectiveness of the HVAC system and to take remedial measures to the HVAC system if necessary, upon receipt of complaints from employees of building-related illness.
- (3) *Availability of training material.* The employer shall make training materials developed in response to paragraph (g), including this standard and its appendices, available for inspection and copying by employees, designated employee representatives, the Director, and the Assistant Secretary.
- (h) *Recordkeeping.* (1) *Maintenance records.* The employer shall maintain inspection and maintenance records required to be established under paragraph (d), which shall include the specific remedial or maintenance actions taken, the name and affiliation of the individual performing the work, and the date of the inspection or maintenance activity.
- (2) *Written IAQ compliance program.* The employer shall maintain the written compliance program and plan required to be established under paragraph (c) of this section.

(3) *Employee complaints.* The employer shall maintain a record of employee complaints of signs or symptoms that may be associated with building-related illness required to be established under paragraph (c) (5) of this section. These complaints shall be promptly transmitted to the designated person for resolution.

(4) *Retention of records.* The employer shall retain records required to be maintained under this section for at least the previous three years, except that records required to be maintained under paragraphs (h) (1) and (h) (2) of this section need not be retained for three years if rendered obsolete by the establishment and replacement of more recent records, or rendered irrelevant due to HVAC system replacement or redesign.

(5) *Availability.* The records required to be maintained by this paragraph shall be available on request to employees and their designated representative and the Assistant Secretary for examination and copying.

(6) *Transfer of records.*

Whenever the employer ceases to do business, records that are required to be maintained by paragraph (h) of this section shall be provided to and retained by the successor employer.

(i) *Dates--(1) Effective date.* This section shall become effective [INSERT DATE 60 DAYS FROM PUBLICATION]

2. *Start-up dates.*

- (i) Employers shall have implemented all provisions of this standard no later than one year from the effective date.
- (j) *Appendices*

Appendix A to § 1910.1033---Carbon Dioxide Measurement Protocol
(Non-Mandatory)

Carbon dioxide (CO₂) sampling is one of the measurement tools used to characterize indoor air quality. Indoor CO₂ air concentrations are indicator measures for effectiveness of building ventilation. Elevated carbon dioxide levels can be an indicator of inadequate outside air exchange rates. Carbon dioxide concentrations below 800 ppm generally indicate that the ventilation is adequate for diluting occupant-generated contaminants. The carbon dioxide concentration and the associated outside air ventilation rate offers no confidence as to the adequacy of dilution and removal of other contaminants released in the space. There is also no implication of health effects associated with this level of carbon dioxide, or any implication of a permissible exposure limit. Health effects have been observed in buildings where the carbon dioxide levels were below 800 ppm.

OSHA recommends this procedure:

- 1) Design a program of air sampling that includes samples taken: a) at least every three months to detect the effects of seasonal changes (summer/winter transition seasons); b) after adjustments have been made to the HVAC system, and; c)

at any time there is reason to believe air quality has deteriorated. At least once a year carbon dioxide levels should be monitored when the HVAC system is providing minimum outside air ventilation.

2) Measure carbon dioxide concentrations late in the morning (about 11:00 am) and late in the afternoon before workers leave for home (about 3:30 pm). These are the times when carbon dioxide levels should be closest to equilibrium levels and should give the best indication of effective air exchange rates. These normal use patterns may be altered by visitor frequency and should be accounted for in the monitoring scheme.

3) Conduct the sampling at a height of between 3 and 5 feet above the floor, or about the height of employee's heads. Make sure the samples are taken at least 2 feet from where people are breathing. Take the samples at a sufficient distance from any other sources of carbon dioxide so these sources do not affect the measurements.

4) Select sampling locations in normally-occupied areas where the ventilation mixing would be the least effective. These areas might include corners of a room farthest from supply ducts and exhaust vents, locations surrounded by barriers that might affect air movement, or rooms at the far end of a ventilation supply duct.

5) Measure the carbon dioxide levels outside the building for comparison with the indoor levels. Average outdoor carbon dioxide levels are typically 300 to 500 ppm.

- 6) Use colormetric detector tubes or other direct-reading instruments calibrated and operated according to the manufacturer's instructions for measuring carbon dioxide concentrations.

Take sampling and analytical error into account before comparing results with the 800 ppm benchmark. All measuring devices have a degree of uncertainty associated with the results. An estimate of that uncertainty is called the sampling and analytical error. The uncertainty can be reduced by taking more samples with the same device. Table A-1 can be used to assure 95 percent confidence that the average of the results from a set of detector tube samples is less than 800 ppm. OSHA recommends these following steps:

(1) Calculate the average of the measurements.

(a) Add the detector tube results together.

(b) Divide that total by the number of samples.

(2) Compare the average of the results with the number of samples taken in the second column in the table. If the average is less than the number in the table, there is confidence that the CO₂ levels are less than 800 ppm.

EXAMPLE: Three samples are taken and the results are 650 ppm, 710 ppm, and 680 ppm. The average of these three samples is 680 ppm (2,040 ppm divided by 3). The results indicate confidence that the carbon dioxide levels are less than 800 ppm since the 680 ppm average of the three samples is less than 695 ppm.

TABLE A-1
NUMBER OF SAMPLES TAKEN TO ASSURE 95% CONFIDENCE CO₂
CONCENTRATIONS ARE LESS THAN 800 PPM

<u>Number of Samples Taken:</u>	<u>The Average Must Be Less Than:</u>
2	670 ppm
3	695 ppm
4	710 ppm
5	720 ppm
6	725 ppm
7	730 ppm

Table A-2 shows how to determine if the indoor sample results are significantly different from the results taken outdoors. Use this table by following these steps:

- (1) Take the same number of samples indoors and outdoors.
- (2) Average the results of the outdoor and indoor samples.
 - (a) Add the outdoor results together and divide by the number of samples taken.
 - (b) Add the indoor results together and divide by the number of samples taken.
- (3) Compare the range of the outdoor and indoor samples.
 - (a) Subtract the lowest sample result of the outdoor samples from the highest result for the outdoor samples.
 - (b) Subtract the lowest sample result of the indoor samples from the highest result for the indoor samples.

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- (4) Calculate *Delta*, which is a term derived by subtracting the difference between the indoor average and the outdoor average and then multiplying that result times 2.
- (5) Calculate the *Sum of the Ranges*. Add the outdoor Range and the indoor Range together.
- (6) Calculate the *Test Statistic*. Divide *Delta* by the *Sum of the Ranges*.
- (7) Compare the *Test Statistic* with the second column in the table below. If the *Test Statistic* is more than the number found in the column, the difference is significant.

EXAMPLE:

- (1) Three samples are taken indoors and three samples are taken outdoors. The results of the outdoor samples are 500 ppm, 580 ppm and 480 ppm. The results of the indoor samples are 650 ppm, 710 ppm, and 680 ppm.
- (2) The average of the outdoor samples is 520 ppm (1,560 ppm divided by 3) and the average of the indoor samples is 680 ppm (2,040 ppm divided by 3).
- (3) The Range of the outdoor samples is 100 (580 - 480 = 100) and the Range of the indoor samples is 60 ppm (710 - 650).
- (4) "Delta" is 320; $(680 - 520) \times 2 = 320$.
- (5) The "Sum of the Ranges" is 160; $(100 + 60) = 160$.
- (6) The "Test Statistic" is 2 (320 divided by 160 = 2).
- (7) Since the "Test Statistic," 2, is greater the 0.974 found in the table for 3 samples, the indoor air levels of

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carbon dioxide are significantly more than the outdoor air levels.

TABLE A-2
DETERMINATION OF THE TEST STATISTIC (IF INSIDE CO₂
CONCENTRATION TESTING RESULTS ARE SIGNIFICANTLY
DIFFERENT FROM OUTSIDE CONCENTRATIONS (95% CONFIDENCE))

<u>Number of Samples Taken:</u>	<u>Test Statistic Must Be More Than:</u>
2	2.322
3	0.974
4	0.644
5	0.493
6	0.405
7	0.347

If the indoor sample results show levels that are greater than 800 ppm or that the indoor levels are significantly more than the outdoor levels, initiate actions to investigate the functioning of the HVAC system and determine if the employees are affected.

Appendix B: Information sources--Nonmandatory.

The following is a partial list of available data sources which building owners/agents of employers may wish to consult to help identify, characterize, and reduce sources of indoor air pollutants in office work environments. These sources also provide useful information concerning the operation, maintenance, and evaluation of mechanical ventilation systems.

Building Air Quality: A Guide for Building Owners and Facility Managers. U.S. EPA/NIOSH. Dec. 1991. EPA/400/1-91/033. DHHS (NIOSH) Publication No. 91-114. Available from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

Introduction to Indoor Air Quality: 1) Self-Paced Learning Module and 2) A Reference Manual. U.S. EPA, Office of Air and Radiation. EPA/400/3-91/00. July 1991.

Managing Indoor Air Quality. 1991. Shirley J. Hansen. The Fairmont Press, Inc., 700 Indian Trail, Lilburn, GA 30247.

ASHRAE Standard 62-1989. Ventilation for Acceptable Indoor Air Quality. American Society of Heating, Refrigeration, and Air-conditioning Engineers, Inc. 1791 Tullie Circle, NE, Atlanta, GA 30329.

Washington State Ventilation and Indoor Air Quality Code, Chapter 51-13 WAC. Washington State Building Code Council.

Indoor Air Quality Workbook. 1990. D. Jeff Burton. IVE, Inc., 178 North Alta Street, Salt Lake City, Utah 84103.

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Appendix C: Smoking cessation program information--Nonmandatory

The following organizations provide smoking cessation information and program material:

(1) The National Cancer Institute operates a toll-free Cancer Information Service (CIS) with trained personnel to help you. Call 1-800-4-CANCER to reach the CIS office serving your area, or write: Office of Cancer Communications, National Cancer Institute, National Institutes of Health, Building 31, Room 10A24, Bethesda, Maryland 20892.

(2) American Cancer Society, 1599 Clifton Road NE, Atlanta, Georgia 30062, (404) 320-3333. The American Cancer Society (ACS) is a voluntary organization composed of 58 divisions and 3,100 local units. Through "The Great American Smokeout" in November, the annual Cancer Crusade in April, and numerous educational material, ACS helps people learn about the health hazards of smoking and become successful exsmokers.

(3) American Heart Association, 7320 Greenville Avenue, Dallas Texas 75231, (214) 750-5300. The American Heart Association (AHA) is a voluntary organization with 130,000 members (physicians, scientists, and laypersons) in 55 states and regional materials about the effects of smoking on the heart. AHA also has developed a guidebook for incorporating a weight-control component into smoking cessation programs.

(4) American Lung Association, 1740 Broadway, New York, New York 10019, (212) 245-8000. A voluntary organization of 7,500 members (physicians, nurses and laypersons), the American Lung Association (ALA) conducts numerous public information programs

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about the health effects of smoking. ALA has 59 state and 85 local units. The organization actively supports legislation and information campaigns for nonsmokers' rights and provides help for smokers who want to quit, for example through "Freedom From Smoking," a self-help cessation program.

(5) Office on Smoking and Health, United States Department of Health and Human Services, 5600 Fisher Lane, Park Building, Room 110, Rockville, Maryland 20857. The Office of Smoking and Health (OSH) is the Department of Health and Human Services' lead agency in smoking control. OSH has sponsored distribution of publications on smoking-related topics, such as free flyers on relapse after initial quitting, helping a friend or family member quit smoking, the health hazards of smoking, and the effects of parental smoking on teenagers.

Part 1928-Occupational Safety Standards for Agriculture - Amended

7. The Authority citation for Part 1928 is proposed to continue to read as follows;

AUTHORITY: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's order Nos. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), or 1-90 (55 FR 9033), as applicable; 29 CFR Part 1911.

8. Section 1928.21 is proposed to be amended by adding a new paragraph (a)(6) to the list of Part 1910 standards applicable to Agriculture as follows:

Section 1928.21 Applicable Standards in 29 CFR Part 1910.

(a) ***

(6) Indoor Air Quality - Section 1910.1033.

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Federal News Service

MARCH 25, 1994, FRIDAY

SECTION: MAJOR LEADER SPECIAL TRANSCRIPT

LENGTH: 1369 words

HEADLINE: NEWS CONFERENCE WITH
SECRETARY OF LABOR ROBERT REICH,
TOM WILLIAMSON, SOLICITOR, DEPARTMENT OF LABOR,
AND JOE DEAR, ASSISTANT SECRETARY,
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
RE: INDOOR TOBACCO SMOKE
DEPARTMENT OF LABOR, WASHINGTON, DC

BODY:

SEC. REICH: Good morning. Today I am instructing the Occupational Safety and Health Administration to propose a rule which would dramatically improve air quality for millions of American workers at the work place. Each day in this country, working men and women face a threat to their health because of poor indoor air quality, including tobacco smoke and other contaminants. The decision to propose a strong set of standards to remedy this hazard was not taken lightly. Soon after this administration arrived in Washington, we commenced an analysis of all of the research to date linking poor air quality at the work place to serious illnesses and deaths among American workers, including heart disease, upper respiratory illnesses and disease, and cancer. After many months of analysis, it is clear that there is sufficient evidence to commence this rulemaking proceeding. I should add that the Department of Labor itself is not, at this time, in full compliance with this proposed rule, and I am today asking the assistant secretary for administration and management, working with the department's joint Labor, Management, Safety and Health Committee, and our employee unions to provide me with a plan for improving the air quality and providing all employees with a smoke-free work place in all department facilities in accordance with our proposal.

I have asked the Occupational Safety and Health Administration to proceed on this issue quickly, but also carefully. It's my preliminary judgment that the proposed rule will protect the lives of millions of American workers without unduly burdening American employers. We are going to invite comment on this rule, and we will take those comments into full consideration in drafting a final rule.

A well-trained and healthy work force is in the interests not just of American workers, it's in the interests of all Americans, American employers included. There is no better way to improve American productivity and American competitiveness than to ensure a well-trained and healthy work force.

Now I'd like to introduce to you two people who have helped in the decision up to date -- Tom Williamson, who is -- on my right -- solicitor of Labor, and also, Joe Dear -- on my left -- who is assistant secretary for occupational

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safety and health.

And Joe, let me ask you to provide your remarks, please.

MR. DEAR: Thank you, Mr. Secretary. Today we're announcing one of the most extensive rulemakings that OSHA has ever undertaken. The indoor air quality provisions of this proposed rule will apply to over 4-1/2 million work sites, and the environmental tobacco smoke provisions of this proposed rule will apply to the over 6 million work sites that are under OSHA's jurisdiction. Now non-industrial work sites include offices, educational facilities, commercial establishments, educational facilities, office areas, and the break rooms of manufacturing or production facilities.

The proposal would require affected employers to develop and implement indoor air quality compliance plans which would include measures such as inspection and maintenance to ensure that current building heating and ventilating systems are functioning as designed. The proposal would not require all building owners and employers to install new ventilation systems. For those buildings where smoking is not prohibited by employers or by local requirements, the proposal would require designated smoking areas which are separate and which have outside exhaust systems.

These rules are an opportunity to invest in prevention. Although there will be costs associated with compliance, the ultimate impact will be a net savings in lives and to the economy. The proposal will protect America's working men and women from heart disease, lung cancer, pulmonary tract infections and countless other diseases and illnesses all linked to poor indoor air quality and environmental tobacco -- (audio break) --

MR. DEAR: The first-year cost, again, is estimated to be \$1.4 billion. The continuing cost is \$6.6 billion.

Q (Off mike.)

MR. DEAR: There is an extensive record produced by virtue of the requests for information that OSHA made several years ago -- over 1,200 comments in the record, and those comments span the gamut from opposition to this action to full support.

Q How would this affect very small -- those with less than 10 employees or people who are self-employed and perhaps even work out of their own homes?

MR. DEAR: Again, OSHA regulates worker safety and health, and holds employers responsible for the safety and health of their workers at their work sites. There is no threshold applied to the indoor air quality or environmental tobacco smoke provisions.

It's commonly thought, apparently, that there is some restriction on OSHA's authority with respect to small employers under 10. That only applies to their scheduling for certain types of inspection. All employers are required to comply. A self-employed individual, by virtue of being self-employed -- not an employer -- is not subject to Occupational Safety and Health Administration regulation.

Q (Off mike) -- situations like you mentioned with restaurants where it's going to be basically or virtually impossible to have smoking in those situations -- (off mike)?

MR. DEAR: That's the -- I think the most prominent example of an impact. We expect if others exist, they will be brought to our attention in the public hearing process.

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Q How about outdoor work sites? Does it affect them at all?

MR. DEAR: Yes.

Q How?

MR. DEAR: Well, it includes -- it does include the construction industry.

Q So there you couldn't have a separate room, so it would just be a ban on smoking, I guess.

MR. DEAR: Again, with respect to -- say that's a public facility and OSHA's regulatory authority is between employer and employees. Q On the outside work site it would -- it wouldn't be the separate room alternate there.

MR. DEAR: At the outdoor facility -- the rule covers indoor air quality and indoor environments, non-industrial work sites. So outdoor facilities are not directly affected by this.

Q It would not include, then, agricultural workers who are working with pesticides, or fumes from the cutting of tobacco leaves, for instance, which is a known danger?

MR. DEAR: We -- this is a -- pesticide regulation is primarily a function of the Environmental Protection Agency under the way responsibilities are divided up under federal law.

With respect to agricultural employees, they are covered by OSHA, and we are aware of the study produced by the National Institute of Occupational Safety and Health with respect to health problems associated with tobacco harvesting. This rule does not have any affect on that particular work place problem.

Q How much flexibility will you be willing to give in the comment period, and do you think you will be willing to exempt restaurants from that?

SEC. REICH: Let me turn this over to our solicitor here.

MR. WILLIAMSON: The reason we have a comment period is to try to inform ourselves about the perspectives of various different interests. I think it would be premature to announce before we've gotten the comments what degree of flexibility we would respond with. I think that depends on the newness of the information and other merits of the comments that are actually provided.

SEC. REICH: I want you all to be clear about this, that we feel there is sufficient evidence to move ahead with this. There is a large body of empirical research showing a linkage and linkages between air contaminants, including tobacco smoke, but also other contaminants, and injuries, illnesses, death from those contaminants at the work place -- sufficient evidence to commence this rulemaking.

We want to provide parties an opportunity to provide additional evidence, to give us whatever other comments, whatever evidence -- additional evidence may be out there.

STAFF: Ladies and gentlemen, one more question, please.

Q In addition to restaurants, wouldn't bars essentially be no smoking areas as well?

MR. DEAR (?): Yes. STAFF: Thank you very much.

SEC. REICH: Thank you.

END

LANGUAGE: ENGLISH

LOAD-DATE-MDC: March 25, 1994

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News

United States
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of Labor



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FOR RELEASE: Immediate
Friday, March 25, 1994

OSHA PROPOSES INDOOR AIR QUALITY, WORKPLACE SMOKING RULES

In an effort to secure a safe and healthful work environment for America's workforce, Secretary of Labor Robert B. Reich today announced the department's Occupational Safety and Health Administration (OSHA) is moving to regulate indoor air quality and environmental tobacco smoke.

"Every day in this country more than 20 million working men and women face unnecessary health threats because of poor indoor air quality and environmental tobacco smoke," Reich said. "The proposed rule is designed to tackle these problems.

"We are confident that compliance with the rule will reduce the suffering and disease associated with poor indoor air quality and environmental tobacco smoke. OSHA has taken this action to prevent thousands of heart disease deaths, hundreds of lung cancer deaths, and the respiratory diseases and other ailments linked to these hazards," said Reich.

According to Reich, "the proposed rule is an investment in prevention. Lives will be saved, health care costs reduced and productivity increased."

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Assistant Secretary of Labor Joseph A. Dear, head of OSHA, added that "the rule is one of the most extensive ever proposed by OSHA. The environmental tobacco smoke provisions in the proposal apply to more than 6 million workplaces under OSHA jurisdiction, while the indoor air provisions apply to more than 4.5 million non-industrial worksites."

Non-industrial workplaces include offices, schools and training centers, commercial establishments, health care facilities, cafeterias and factory break rooms.

The proposal would require affected employers to write and implement indoor air quality compliance plans including inspection and maintenance of current building systems to ensure they are functioning as designed. The proposal would not require all building owners and employers to install new ventilation systems.

In buildings where smoking is not prohibited by employers or local requirements, the proposal would require designated smoking areas which are separate, enclosed rooms exhausted directly to the outside. Other proposed provisions would require employers to maintain healthy air quality during renovation, remodeling and similar activities.

"This proposed rule on indoor air quality and environmental tobacco smoke is part of the most ambitious standard-setting agenda in OSHA history," said Reich. "The standards OSHA plans to set over the next two years will help ensure that America's working men and women will not face unnecessary risks and health hazards in their workplace.

"The department is committed to tackling the tough issues and tackling them with tough regulations. That's what the new OSHA is all about."

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The proposed rule will be delivered to the Federal Register on March 28 with publication expected in a week to 10 days.

Written comments on the proposal should be submitted within 90 days of publication in quadruplicate or on a disk (in WP 5.0, 5.1, 6.0 or Ascii) with one hard copy and information not contained in the disk (e.g. studies, articles, etc.) submitted in quadruplicate, to the OSHA Docket, Docket No. H-122, Room N-2625, 200 Constitution Ave. N.W., Washington, D.C. 20210

Requests for public hearings should be submitted within 30 days after publication in the Federal Register to Tom Hall, OSHA Division of Consumer Affairs, Room N-3649, 200 Constitution Ave. N.W., Washington, D.C. 20210 (phone: 202-219-8617). Such requests should include a statement on reasons hearings are necessary and the issues a requestor would anticipate addressing.

If hearings are held, a notice will be published in the Federal Register announcing date(s), time(s) and location(s).

#####

Note to editors: See attached fact sheet for details of the proposed rule.

The text of this news release is available from the Department of Labor electronic bulletin board, LABOR NEWS, at 202-219-4784. Callers must pay any toll-call charges. 300, 1200, 2400, 9600 or 14,400 BAUD; Parity: None; Data Bits=8; Stop Bits=1; Voice phone 202-219-8831.

The information in this news release will be made available to sensory impaired individuals upon request. Voice phone: 202-219-8151.

A statement by Secretary Reich on indoor air quality will be available on the department's audio news service after 12 p.m. E.S.T. 1-800-877-9002.

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FACT SHEET ON OSHA PROPOSED RULE

HEALTH EFFECTS OF POOR INDOOR AIR QUALITY AND ENVIRONMENTAL TOBACCO SMOKE

- Poor indoor air quality has been shown to result in headaches, respiratory infections, wheezing, nausea, dizziness, respiratory allergies, Legionnaire's disease, influenza, colds, measles, pulmonary tract infections and other ailments.
- Exposure to environmental tobacco smoke has been linked to heart disease, lung cancer, decreases in pulmonary function, low birthweight babies, miscarriages, a number of birth defects and other illnesses and diseases.
- Of more than 70 million employees working indoors, OSHA estimates that 21 million are exposed to poor indoor air and millions of others are exposed to environmental tobacco smoke.

SCOPE OF PROPOSAL

- Provisions for indoor air quality apply to 70 million workers and more than 4.5 million non-industrial indoor work environments, including offices, schools, commercial establishments, health care facilities, cafeterias and break rooms.
- Environmental tobacco smoke provisions apply to industrial and non-industrial work environments, or all of the over 6 million work environments under OSHA jurisdiction.

COMPLIANCE REQUIREMENTS (partial listing)

- Employers must develop and implement indoor air quality compliance plans.

- Employers are required to assure proper functioning of building systems which affect indoor air quality.
- Employers who do not prohibit smoking must designate non-working smoking areas that are enclosed and exhausted directly to the outside.
- Employers who do not control their building's ventilation systems must demonstrate a good faith effort to comply.
- Full implementation of the standard must go into effect one year from the effective date.

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§ 1910.1033 Indoor Air Quality.

(a) Scope and application. (1) The provisions set forth in this section apply to all nonindustrial work environments.

(2) The provisions set forth in paragraph (e)(1) of this section, which address employee exposure to tobacco smoke, apply to all indoor or enclosed workplaces under OSHA jurisdiction.

(b) Definitions

Air contaminants refers to substances contained in the vapors from paint, cleaning chemicals, pesticides, and solvents, particulates, outdoor air pollutants and other airborne substances which together may cause material impairment to employees working within the nonindustrial environment.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Building-Related Illness describes specific medical conditions of known etiology which can be documented by physical signs and laboratory findings. Such illnesses include sensory irritation when caused by known agents, respiratory allergies, asthma, nosocomial infections, humidifier fever, hypersensitivity pneumonitis, Legionnaires' disease, and the signs and symptoms characteristic of exposure to chemical or biologic substances such as carbon monoxide, formaldehyde, pesticides, endotoxins, or mycotoxins.

Building systems include but are not limited to the heating, ventilation and air-conditioning (HVAC) system, the potable water systems, the energy management system and all other systems in a facility which may impact indoor air quality.

Designated person means a person who has been given the responsibility by the employer to take necessary measures to assure compliance with this section and who is knowledgeable in the requirements of this standard and the specific building systems servicing the affected building or office.

Designated smoking area means a room, in a non-work area, in which smoking of tobacco products is permitted.

Director means the Director, National Institute for Occupational Safety and Health (NIOSH) U.S. Department of Health and Human Services or designee.

Employer means all persons defined as employers by Sec. 3(5) of the Occupational Safety and Health Act of 1970 including employers (such as building owners or lessees) who control the ventilation or maintenance of premises where employees of other employers work.

HVAC system means the collective components of the heating, ventilation and air-conditioning system including, but not limited to, filters and frames, cooling coil condensate drip pans and drainage piping, outside air dampers and actuators, humidifiers, air distribution ductwork, automatic temperature controls, and cooling towers.

Nonindustrial work environment means an indoor or enclosed work space such as, but not limited to, offices, educational facilities, commercial establishments, and healthcare facilities, and office areas, cafeterias, and break rooms located in manufacturing or production facilities used by employees. Non-industrial work environments do not include manufacturing and production facilities, residences, vehicles, and agricultural operations.

Renovation and remodeling means building modification involving activities that include but are not limited to: removal or replacement of walls, ceilings, floors, carpet, and components such as moldings, cabinets, doors, and windows; painting, decorating, demolition, surface refinishing, and removal or cleaning of ventilation ducts.

(c) Indoor air quality (IAQ) compliance program

(1) All employers with workplaces covered by paragraph

(a)(1) of this section shall establish a written IAQ compliance program.

(2) The employer shall identify a designated person who is given the responsibility to assure implementation of the IAQ compliance program.

(3) Written plans for compliance programs shall include at least the following:

(i) A written narrative description of the facility building systems;

(ii) Single-line schematics or as-built construction documents which locate major building system equipment and the areas that they serve;

(iii) Information for the daily operation and management of the building systems, which shall include at least a description of normal operating procedures, special procedures such as seasonal start-ups and shutdowns, and a list of operating performance criteria including, but not limited to minimum outside air ventilation rates, potable hot water storage and delivery temperatures, range of space relative humidities, and any space pressurization requirements.

(iv) A general description of the building and its' function including but not limited to, work activity, number of employees and visitors, hours of operation, weekend use, tenant requirements and known air contaminants released in the space;

(v) A written maintenance program for the maintenance of building systems which shall be preventive in scope and reflect equipment manufacturer's recommendations and recommended-good-practice as determined by the building systems maintenance industry. At a minimum, the maintenance program shall describe the equipment to be maintained, and recommend maintenance procedures and frequency of performance.

(vi) A checklist for the visual inspection of building systems.

- (4) The following additional information, if available, shall be retained by the employer to assist in potential indoor air quality evaluations:
- (i) As-built construction documents;
 - (ii) HVAC system commissioning reports;
 - (iii) HVAC systems testing, adjusting and balancing reports;
 - (iv) Operations and maintenance manuals;
 - (v) Water treatment logs; and
 - (vi) Operator training materials
- (5) The employer shall establish a written record of employee complaints of signs or symptoms that may be related to building-related illness to include at least information on the nature of the illness reported, number of employees affected, date of employee complaint, and remedial action, if any, taken to correct the source of the problem.
- (d) Compliance program implementation. Employers shall assure compliance with this section by implementing at least the following actions:
- (1) Maintain and operate the HVAC system to assure that it operates up to original design specifications and continues to provide at least the minimum outside air ventilation rate, based on actual occupancy, required by the building code, mechanical code, or ventilation code applicable at the time the facility was constructed, renovated, or remodeled, whichever is most recent;
 - (2) Conduct building systems inspection and maintenance in accordance with paragraph (c);
 - (3) Assure that the HVAC system is operating during all work shifts, except during emergency HVAC repairs and during scheduled HVAC maintenance;
 - (4) Implement the use of general or local exhaust ventilation where housekeeping and maintenance activities involve use of equipment or products that could reasonably be expected to result in hazardous chemical or particulate exposures to employees working in other areas of the building or facility;
 - (5) Maintain relative humidity below 60% in buildings with mechanical cooling systems;
 - (6) The employer shall monitor carbon dioxide levels when routine maintenance under paragraph (d)(1) is done. When the carbon dioxide level exceeds 800 ppm, the employer shall check to make sure the HVAC system is operating as it should. If it is not, the employer shall take necessary steps to correct deficiencies if they exist.
 - (7) Assure that buildings without mechanical ventilation are maintained so that windows, doors, vents, stacks and other portals designed or used for natural ventilation are in operable condition;
 - (8) Assure that mechanical equipment rooms and any non-ducted air plenums or chases that transport air are

maintained in a clean condition, hazardous substances are properly stored to prevent spillage, and asbestos, if friable, is encapsulated or removed so that it does not enter the air distribution system;

(9) Assure that inspections and maintenance of building systems are performed by or under the supervision of the designated person;

(10) Establish a written record of building system inspections and maintenance required to be performed under this section; and

(11) Assure that employees performing work on building systems are provided with and use appropriate personal protective equipment as prescribed in 29 CFR 1926, Subpart E, Personal Protective and Life Saving Equipment; 29 CFR 1926.52, Occupational Noise Exposure; 29 CFR 1910, Subpart I, Personal Protective Equipment; and 29 CFR 1910.95 Occupational Noise Exposure.

(12) Evaluate the need to perform alterations of the building systems to meet the minimum requirements specified in paragraph (d) of this section in response to employee complaints of building-related illnesses.

(13) Take such remedial measures as the evaluation shows to be necessary.

(e). Controls for specific contaminant sources.

(1) Tobacco smoke.

(i) In workplaces where the smoking of tobacco products is not prohibited, the employer shall establish designated smoking areas and permit smoking only in such areas;

(ii) The employer shall assure that designated smoking areas are enclosed and exhausted directly to the outside, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area;

(iii) The employer shall assure that cleaning and maintenance work in designated smoking areas is conducted only when no smoking is taking place;

(iv) The employer shall assure that employees are not required to enter designated smoking areas in the performance of normal work activities;

(v) The employer shall post signs clearly indicating areas that are designated smoking areas; and

(vi) The employer shall post signs that will clearly inform anyone entering the workplace that smoking is restricted to designated areas.

(vii) The employer shall prohibit smoking within designated smoking areas during any period that the exhaust ventilation system servicing that area is not properly operating.

(2) Other indoor air contaminants.

(i) The employer shall implement measures such as the relocation of air intakes and other pathways of

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building entry, where necessary, to restrict the entry of outdoor air contaminants such as vehicle exhaust fumes, into the building;

(ii) When general ventilation is inadequate to control air contaminants emitted from point sources within workspaces the employer shall implement other control measures such as local source capture exhaust ventilation or substitution.

(3) Microbial contamination.

(i) The employer shall control microbial contamination in the building by routinely inspecting for, and promptly repairing, water leaks that can promote growth of biologic agents;

(ii) The employer shall control microbial contamination in the building by promptly drying, replacing, removing, or cleaning damp or wet materials; and

(iii) The employer shall take measures to remove visible microbial contamination in ductwork, humidifiers, other HVAC and building system components, or on building surfaces when found during regular or emergency maintenance activities or during visual inspection.

(4) Use of cleaning and maintenance chemicals, pesticides, and other hazardous chemicals in the workplace.

(i) The employer shall assure that these chemicals are used and applied according to manufacturers' recommendations; and

(ii) The employer shall inform employees working in areas to be treated with potentially hazardous chemicals, at least within 24 hours prior to application, of the type of chemicals intended to be applied.

(f) Air quality during renovation and remodeling.

(1) General. During renovation or remodeling, the employer shall assure that work procedures and appropriate controls are utilized to minimize degradation of the indoor air quality of employees performing such activities and employees in other areas of the building.

(2) Work plan development.

(i) Before remodeling, renovation, or similar activities are begun the employer shall meet with the contractor or individual(s) performing the work and shall develop and implement a work plan designed to minimize entry of air contaminants to other areas of the building during and after performance of the work; and

(ii) The work plan shall consider all of the following where appropriate:

(A) Requirements of this standard.

(B) Implementation of means to assure that HVAC

systems continue to function effectively during remodeling and renovation activities.

(C) Isolation or containment of work areas and appropriate negative pressure containment;

(D) Air contaminant suppression controls or auxiliary air filtration/cleaning.

(E) Controls to prevent air contaminant entry into the HVAC air distribution system.

(3) Prior notification of employees who work in the building.

(i) The employer shall notify employees at least 24 hours in advance, or promptly in emergency situations, of work to be performed on the building that may introduce air contaminants into their work area;

(ii) Notification shall include anticipated adverse impacts on indoor air quality or workplace conditions.

(g) Employee information and training.

(1) The employer shall provide training for maintenance workers and workers involved in building system operation and maintenance which shall include at least the following:

(i) Training in the use of personal protective equipment (PPE) needed in operating and maintaining building systems;

(ii) Training on how to maintain adequate ventilation of air contaminants generated during building cleaning and maintenance; and

(iii) Training of maintenance personnel on how to minimize adverse effects on indoor air quality during the use and disposal of chemicals and other agents.

(2) All employees shall be informed of:

(i) The contents of this standard and its appendices; and

(ii) Signs and symptoms associated with building-related illness and the requirement under subparagraph (d)(12) and (d)(13) of this section directing the employer to evaluate the effectiveness of the HVAC system and to take remedial measures to the HVAC system if necessary, upon receipt of complaints from employees of building-related illness.

(3) Availability of training material. The employer shall make training materials developed in response to paragraph (g), including this standard and its appendices, available for inspection and copying by employees, designated employee representatives, the Director, and the Assistant Secretary.

(h) Recordkeeping. (1) Maintenance records.

The employer shall maintain inspection and maintenance records required to be established under paragraph (d), which shall include the specific remedial or maintenance actions taken, the name and affiliation of the individual performing the work, and the date of the inspection or maintenance activity.

(2) Written IAQ compliance program. The employer shall

maintain the written compliance program and plan required to be established under paragraph (c) of this section.

(3) Employee complaints. The employer shall maintain a record of employee complaints of signs or symptoms that may be associated with building-related illness required to be established under paragraph (c)(5) of this section. These complaints shall be promptly transmitted to the designated person for resolution.

(4) Retention of records. The employer shall retain records required to be maintained under this section for at least the previous three years, except that records required to be maintained under paragraphs (h)(1) and (h)(2) of this section need not be retained for three years if rendered obsolete by the establishment and replacement of more recent records, or rendered irrelevant due to HVAC system replacement or redesign.

(5) Availability. The records required to be maintained by this paragraph shall be available on request to employees and their designated representative and the Assistant Secretary for examination and copying.

(6) Transfer of records.

Whenever the employer ceases to do business, records that are required to be maintained by paragraph (h) of this section shall be provided to and retained by the successor employer.

(i) Dates--(1) Effective date. This section shall become effective [INSERT DATE 60 DAYS FROM PUBLICATION]

2. Start-up dates.

(i) Employers shall have implemented all provisions of this standard no later than one year from the effective date.

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ASH v. OSHA

April 1, 1994

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I. **SUMMARY**

- Action on Smoking and Health (ASH) has tried for more than seven years to force OSHA into a federal rulemaking that would ban or severely restrict workplace indoor smoking. Up to this point, ASH's court challenges have been unsuccessful, although ASH now claims responsibility for forcing OSHA to initiate proposed rulemaking on indoor smoking (see attached).
- In the pending lawsuit ASH v. OSHA, filed December 22, 1992, ASH seeks to force OSHA to segregate ETS from the larger issue of IAQ and devote a regulation solely to workplace smoking. The parties have exchanged their briefs on the merits; the remainder of the briefing schedule is as follows:

April 1, 1994	ASH's Reply Due
April 8, 1994	Deferred Appendix
April 22, 1994	Final Briefs
May 16, 1994	Oral Argument

- ASH has also mailed solicitations (see attached) seeking financial support for its effort at OSHA, and for other possible litigation.
- On March 25, 1994, ASH issued a press release (see attached) to claim responsibility for OSHA's announcement of a proposed

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rulemaking on IAQ and ETS. ASH states that its lawsuit has been successful, but that it will continue to use the litigation to pressure OSHA move expeditiously in imposing a total ban on smoking in the workplace.

II. POSSIBLE IMPACT OF ASH ACTIONS

- ASH may use OSHA and the issue of workplace smoking as an ongoing vehicle to raise money to finance various types of other litigation. Lawsuits brought on behalf of ETS exposed children is one example cited by ASH.
- ASH could eventually be successful in its pending lawsuit, resulting in a possible court mandate for OSHA to take certain court-directed actions regarding possible regulation of indoor smoking.

III. BACKGROUND

- ASH has sued OSHA in the U.S. Court of Appeals for the District of Columbia four times. The first three cases, filed in 1989 and 1991, were dismissed. Each case is summarized individually in the Sections below.

- The fourth case, filed in December 1992, is pending. It is summarized in Section VII below.
- In addition to the December 1992 lawsuit, three of the petitions ASH has filed with OSHA apparently remain pending. They are summarized in Section VIII below. ASH most recently petitioned OSHA on July 12, 1993; the petition asks OSHA to issue an emergency temporary standard banning smoking in the workplace.
- For ease of reference, Section IX briefly discusses IAQ-related petitions filed with OSHA by individuals and entities other than ASH.

IV. EVENTS RELATING TO CASE NO. 89-1656 (DISMISSED MAY 10, 1991)

- A. May 19, 1987 -- ASH petitions OSHA for an emergency temporary standard to prohibit or restrict smoking in common indoor workplace areas.
- B. September 1, 1989 -- OSHA determines "that an emergency temporary standard is not warranted in this case."

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- C. October 27, 1989 -- ASH files Case No. 89-1656, seeking review of OSHA's decision not to issue an emergency temporary standard.
- D. November 30, 1990 -- After an agreed, five-month period of abeyance in the case, OSHA informs ASH by letter that it is not prepared to initiate rulemaking on ETS, "although a final decision on whether, and how, to proceed has not been reached."
- E. December 14, 1990 -- OSHA files a status report in Case No. 89-1656 stating that it intends to issue a request for information on indoor air in the spring of 1991.
- F. May 6, 1991 -- The court hears oral argument on the Petition for Review. A Department of Labor attorney arguing on behalf of OSHA states that ASH's evidence "does not purport to estimate or quantify the magnitude of risk in the workplace" and that "more accurate estimates to exposure in the workplace, in the home and in public places is necessary in this area." Transcript, p. 16.
- G. May 10, 1991 -- D.C. Circuit dismisses case. "Substantially for the reasons stated in the OSHA's

decision letter of September 1, 1989, we believe that the OSHA reasonably determined that it could not at this time sufficiently quantify the degree of risk associated with workplace exposure to ambient tobacco smoke to justify issuing an [emergency temporary standard.]"

V. EVENTS RELATING TO CASE NO. 91-1037 (DISMISSED JANUARY 29, 1992):

- A. December 14, 1990** -- OSHA files a status report in Case No. 89-1656, stating that the agency "has decided to issue a Request for Information on indoor air quality problems, including any related to [ETS]."
- B. January 23, 1991** -- ASH files Case No. 91-1037, seeking review of OSHA's decision to include ETS in the Request for Information on indoor air quality. ASH alleges that OSHA's plan would "trivialize the tobacco menace." ASH prays for an order setting aside the decision to issue an RFI and remanding the proceeding to OSHA "for issuance of a Notice of Proposed Rulemaking to establish an emergency or permanent standard for control of [ETS] in the workplace."

C. January 29, 1992 -- Court grants defendants' motions to dismiss in an order issued jointly in Case Nos. 91-1037 and 91-1038.

1. "Neither the November 30, 1990, letter from the Occupational Safety and Health Administration ('OSHA') to petitioner, nor the December 14, 1991 [sic], OSHA status report filed in No. 89-1656, represents final agency action relating to the regulation of tobacco smoke in the workplace."
2. "We are satisfied by OSHA's representation that it will decide whether and how to regulate exposure to tobacco smoke in the workplace as soon as possible following analysis of the comments it receives in response to the [RFI]."
3. "This order is without prejudice to renewal of petitioner's request in the event that OSHA unreasonably delays resolution of this matter following receipt of comments."

VI. EVENTS RELATING TO CASE NO. 91-1038 (DISMISSED JANUARY 29, 1992)

- A. November 30, 1990 -- In the context of Case No. 89-1656 (see above), OSHA Administrator Gerard F. Scannell writes letter to OSHA, stating that "OSHA is not prepared, at the present time, to initiate rulemaking on ETS, although a final decision whether, and how, to proceed has not been reached.
- B. January 23, 1991 -- ASH files Case No. 91-1038, seeking review of OSHA's position as represented by the November 30 letter. "OSHA appears . . . to have disregarded the substantial evidence in the record considered as a whole, once more postponed making a final decision and thereby unlawfully withheld and unreasonably delayed agency action," ASH alleges. ASH prays that the November 30 determination be set aside and that the proceeding be remanded to OSHA "for immediate commencement of a rulemaking proceeding to establish an emergency temporary, or permanent standard for control of [ETS] in the workplace."
- C. January 29, 1992 -- Court grants defendants' motions to dismiss in an order issued jointly in Case Nos. 91-1037 and 91-1038. See Section II.C above.

VII. EVENTS RELATING TO CASE NO. 92-1661 (FILED DECEMBER 22, 1992; PENDING)

- A. July 31, 1992 -- ASH petitions OSHA (1) to regulate ETS as a potential occupational carcinogen pursuant to the OSHA Cancer Policy and (2) to isolate ETS from the ongoing examination of overall indoor air quality.
- B. October 30, 1992 -- In a letter to ASH, Acting OSHA Director Dorothy Strunk refuses to isolate ETS from the ongoing examination of overall indoor air quality and to take immediate steps to regulate ETS as a potential occupational carcinogen.
- C. December 22, 1992 -- ASH files Case No. 92-1661, seeking review of the determinations reflected in the October 30 letter. ASH prays for an order setting aside both determinations, remanding the matter to OSHA for further consideration of ASH's petition, and setting a timetable for OSHA to regulate ETS in the workplace.
- D. January 13, 1993 -- In a public announcement not attributed to the ASH litigation, outgoing Labor Secretary Lynn Martin directs OSHA "to commence rulemaking to address the hazards of occupational exposure to secondhand smoke."

- E. May 20, 1993 -- The court denies OSHA's motion to dismiss, finding that the October 30, 1992, letter "meets the criteria of a final, reviewable order," grants ASH's motion to hold the case in abeyance for 60 days (based on former Secretary Martin's January 1993 directive), and orders the parties to file motions to govern further proceedings at the end of the 60-day period.
- F. July 19, 1993 -- Both sides file separate motions to govern proceedings. ASH seeks an immediate briefing and argument schedule, while OSHA seeks a continuation of the order holding the case in abeyance. OSHA says Labor Secretary Robert Reich has not yet made a decision about regulating ETS and cannot say "when he will decide whether or how to regulate occupational exposure to tobacco smoke." OSHA suggests that an initial status report be filed in 90 days.
- G. September 15, 1993 -- Court grants ASH's motion to proceed with briefing and oral argument while denying OSHA's motion to hold the case in abeyance.
- H. February 9, 1994 -- ASH files its brief on the merits of its petition for review. In its brief, ASH alleges that it first sought OSHA regulation of ETS in the workplace

more than 18 years ago and argues that OSHA's refusal to take "concrete action" on the issue during that time constitutes "unreasonable, illegal, and egregious delay," particularly in light of "the scientific certainty of the danger and the huge number of workers exposed."

ASH also argues that OSHA's failure to consider ETS in a rulemaking separate from IAQ issues in general and OSHA's "failure to make a separate determination regarding its carcinogenicity" is arbitrary and capricious and a violation of OSHA's own regulations and Cancer Policy. ASH refers to OSHA's request for information on indoor air as a "lumping" of ETS with a "wide variety of other very different, largely unstudied, and not very dangerous substances."

Finally, ASH argues that "the Court should retain jurisdiction over this matter and utilize techniques it used in prior OSHA and other cases of delay, and order OSHA to: (A) publish a separate notice of proposed rulemaking devoted solely to ETS within thirty (30) days of the Court's order; (B) establish -- subject to the Court's approval -- a strict timetable based upon OSHA's own regulations for conducting and completing the rulemaking; (C) require OSHA to notify the Court

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immediately of any proposed change of plan or of any event which might clause any deviation from the timetable."

ASH cites the ETS risk assessment in its brief and characterizes the document as "a leading authority today on the health risks of ETS." The EPA is characterized by ASH as having "primary expertise in estimating the number of deaths caused by exposure to airborne carcinogens."

- I. March 21, 1994 -- OSHA files its brief opposing ASH's petition for review. OSHA claims that its Cancer Policy "does not require the immediate initiation of rulemaking on any particular alleged carcinogen, and it does not prohibit OSHA from regulating a carcinogen in the same rulemaking proceeding as other noncarcinogenic hazards." OSHA further claims that there is no basis for ASH's claim that OSHA has unreasonably delayed initiating a rulemaking addressing ETS.

According to OSHA, "The subject matter of the proceeding is highly controversial and the Secretary has properly chosen to consider carefully all regulatory options and the extensive body of information already submitted to the agency." OSHA also points out that is has taken

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"concrete administrative actions" to complete the rulemaking, and thus, ASH's claims of delay are moot. (At the time OSHA filed its brief, it had submitted its rulemaking proposal to the Office of Management and Budget for a cost analysis.)

OSHA also states that any delay must date from the time the comment period for the request for information closed, March 21, 1992. "The response to the RFI was overwhelming," claims OSHA. "OSHA received over 1200 comments, exceeding 17,000 pages of materials, including a number of complex technical submissions by the close of the comment period. Obviously, it was entitled to a reasonable period of time to study and analyze the information, to seek further information where necessary, and to determine whether the statutory requirements for rulemaking on indoor air quality, including ETS, were satisfied."

OSHA also reminds the court that a new administration took office in January 1993, and that the post of Assistant Secretary remained vacant until the confirmation of Joseph Dear on November 8, 1993. "It is unreasonable to expect that significant priority-setting and resource-allocation decisions concerning the

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rulemaking could have been made without the participation of the Assistant Secretary." OSHA argues that the Occupational Safety and Health Act sets no time limits on pre-proposal activities, and grants the Secretary "broad discretion to determine whether to regulate particular hazards at all."

To counter ASH's claims that ETS should be regulated separately from IAQ, OSHA argues that the Secretary has allocated his budget resources to achieve optimum benefit by proposing to regulate IAQ and ETS in the same rulemaking. "Absent exigent circumstances of the most compelling sort, the agency's informed judgment as to the expected benefits of this approach should not be disturbed." OSHA suggests that there is no need for the court to retain jurisdiction over the matter.

VIII. PENDING PETITIONS FILED BY ASH WITH OSHA

- A. "Petition . . . for Rulemaking Banning Smoking in Workplaces," Docket H-122 (RFI Docket), Item 3-991 (filed February 26, 1992). Attached as Exhibit No. 1 is the OSHA ETS standard proposed by ASH.

- B. "Petition . . . for Rulemaking Regulating Tobacco Smoke in the Workplace as a Potential Occupational Carcinogen," Docket H-122 (RFI Docket), Item 3-1030 (filed March 10, 1992).
- C. Petition for Emergency Temporary Standard, Docket H-030 (ETS docket) (filed July 12, 1993). ASH alleges that since it first petitioned OSHA for an emergency temporary standard on ETS, there is considerably more evidence -- including the EPA Risk Assessment on ETS -- that ETS poses a "serious risk of cancer, heart disease, various respiratory illnesses and other grave dangers to employees."

IX. PETITIONS FILED WITH OSHA BY INDIVIDUALS AND ORGANIZATIONS OTHER THAN ASH

- A. September 1985 -- Senator Garn files petition for Mr. David Horne, et al., requesting classification of tobacco smoke as a Category One Potential Occupational Carcinogen. OSHA denied the petition in November 1985.
- B. November 1986 -- Representative Monson files a petition for Mr. David Horne requesting an emergency temporary standard governing smoking in the workplace. OSHA denied the petition in February 1987.

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- C. May 6, 1987 -- Public Citizen Health Research Group and the American Public Health Association petition OSHA for an emergency temporary standard to prohibit smoking in all indoor workplaces except for certain specified areas. OSHA denied the petition.
- D. March 31, 1992 -- AFL-CIO and other unions petition OSHA to develop an IAQ standard based on a "building systems" approach. OSHA responded in May 1992 by stating that such a standard was under consideration.
- E. June 10, 1992 -- The Coalition on Smoking or Health petitions OSHA to expedite action to protect workers from ETS exposure. By letter dated July 29, 1992, Labor Secretary Martin replies that her department is aware of the "possible adverse health effects" of ETS exposure and is "currently assessing available data."
- F. More than 1,200 comments of various types have been submitted to the OSHA public docket.



ACTION ON SMOKING AND HEALTH

2013 H St., N.W. • Washington D.C. 20008 • (202) 659-4310

FOR IMMEDIATE RELEASE:
Friday, March 25, 1994

FOR MORE INFORMATION, CALL:
John Banzhaf (202) 659-4310; (703) 527-8418

OSHA Smoking Policy Developed to Meet Court Deadline

**ASH Proclaims its Law Suit Successful, But Will Not Dismiss It Yet
Even Smoking in Separately-Ventilated Rooms May be Unlawful**

OSHA's new policy on workplace smoking was developed to meet a court deadline that it file a brief by Friday, March 18th, demonstrating that it did not unreasonably delay in acting on the issue of workplace smoking.

Ironically, the agency failed even to meet this deadline, since the proposal was unexpectedly held up by the Office of Management and Budget (OMB).

Action on Smoking and Health (ASH), the antismoking organization which brought the suit in the U.S. Court of Appeals, says that it is very pleased with OSHA's action, and believes that its law suit has been largely successful.

However, said law professor John Banzhaf, ASH's Executive Director, the legal action will not be dismissed.

Rather, he says, ASH will use the law suit to continue to press OSHA to move even more quickly on a workplace danger which kills more than 500 American workers each and every week.

He will also ask the court to retain jurisdiction to assure that the final regulation is consistent with the statutory requirement which limits exposure to a toxic chemical to the lowest level which is technologically and economically feasible.

Since tobacco smoke — unlike asbestos, benzene, cadmium, and other regulated chemicals — is not necessary in any workplace process, the lowest feasible level is zero, says Banzhaf.

Permitting workplace smoking, even in separately-ventilated rooms, is as illegal and illogical as permitting unnecessary asbestos in the workplace, even if it likewise is in a separately ventilated room.

Scientific studies show, he says, that smoking even in separately-ventilated rooms poses a health risk to workers from the amount of smoke which nevertheless escapes which is higher than allowed with other chemicals.

ASH's previous legal actions helped end cigarette commercials, first triggered the modern nonsmokers' rights movement, led to a smoking ban on domestic airline flights, developed the legal theory under which the FDA is considering regulating cigarettes, and helped hundreds of individual nonsmokers.

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ACTION ON SMOKING AND HEALTH

2013 H St., N.W. • Washington D.C. 20006 • (202) 659-4310

Dear ASH Supporter:

Now YOU can help ASH fight to eliminate smoking in the workplace and at the same time help all nonsmokers!

Several federal health agencies have conclusively determined that separate smoking sections do not provide adequate protection, especially in restaurants where the smoke drifts into the no-smoking section.

So ASH stepped up the pressure on the Occupational Safety and Health Administration (OSHA) with its latest legal petition filed July 12, 1993. We now have four proceedings (including a suit in the U.S. Court of Appeals) against OSHA, seeking to force the agency to protect workers and those who frequent workplaces by issuing an across-the-board rule banning workplace smoking.

BUT YOUR HEALTH CAN'T WAIT! SO WE'RE URGING THAT WORKERS EXPOSED TO SMOKE ACT NOW TO PROTECT THEMSELVES, WITHOUT HAVING TO WAIT FOR A RULING ON ASH'S LAWSUIT.

To help ASH, simply file an easy 2-page complaint with OSHA. The form is enclosed, and the complaint can be filed anonymously! (Be sure to read the instructions carefully before you file.)

And even if YOU'RE not exposed to tobacco smoke where YOU work, encouraging people you know who do work in offices, restaurants, airplanes, retail stores and even malls to file OSHA complaints can help clean the air YOU are forced to breathe.

ASH IS UNDERTAKING A MAJOR NEW OFFENSIVE TO PROTECT NONSMOKERS BY HELPING THEM FILE OSHA COMPLAINTS.

Our hope is that this new project will finally force OSHA to address the smoking issue. We also believe it will help prompt OSHA to issue an across-the-board rule banning smoking, rather than trying to deal with each individual complaint.

TO HELP COORDINATE THE OFFENSIVE AGAINST OSHA, ASH HAS HAD TO HIRE A NEW ATTORNEY AND A NEW LEGAL SECRETARY.

However, we believe this substantial increase in cost is warranted by the real chance of achieving a total victory for all nonsmokers — a complete ban on all workplace smoking! That's why I'm writing to ask you to do TWO things:

1. file a complaint with OSHA if your workplace is not smokefree, or help persuade at least one person you know to do so;
2. make an extra contribution of \$40, \$30 or whatever you can afford to help ASH meet these substantially increased expenses.

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Taking on a major federal agency AND the mighty tobacco industry is no small task, but ASH's track record proves it can handle the challenge:

- ASH used legal action to force the FCC to make broadcasters provide free time for antismoking messages — this led directly to the ban on cigarette commercials.
- ASH used legal action to make the CAB issue airplane smoking rules — which led to the smoking ban on domestic flights.
- And ASH successfully used legal action to get the ICC to require interstate buses to ban smoking.

All of these — and the many other ASH victories — were possible only because of the support of concerned citizens like you. This time the tobacco industry is hoping you won't care enough to back the fight to protect YOUR rights and YOUR health.

Then they can use their stranglehold on OSHA to prevent it from acting. This despite overwhelming evidence that workplace smoking kills tens of thousands of people each year — evidence the industry is trying desperately to discredit.

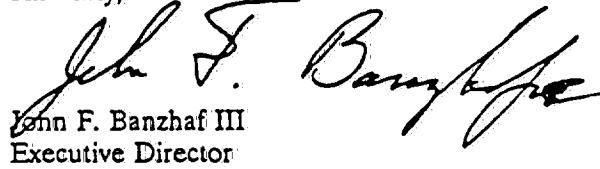
ASH is fighting and winning for you, but we urgently need your help. Please consider filing a complaint or persuading a worker you know to file one. And please send us your contribution now — \$40 will go a long way in our vital, life-saving work. Show that you care enough about your health, and the health of your loved ones, to support ASH's fight on YOUR behalf.

Coordinating the filing of hundreds of different complaints will be both challenging and time-consuming, particularly since the forms must be filed with dozens of individual offices at many different locations. Indeed, under federal law, some must even be filed with state agencies which act in conjunction with OSHA.

ASH IS READY TO UNDERTAKE THIS DAUNTING TASK — THIS MAJOR ESCALATION OF THE BATTLE FOR YOUR RIGHTS AND YOUR HEALTH — IF YOU ARE PREPARED TO SUPPORT US.

Please don't wait. The quicker we receive your complaint form and your contribution, the more quickly we can move forward to help protect you individually, as well as all nonsmokers generally. Your complaint form must be received at ASH by December 1, 1993 in order for us to process and mail it.

Sincerely,



John F. Banzhaf III
Executive Director

P.S.: By completing and mailing the enclosed OSHA complaint along with your check for \$40 to help cover the costs of this major new program, you can help limit smoking in your workplace, and in all the restaurants, stores, and other people's workplaces you visit. PLEASE ACT NOW; ASH must receive your complaint by December 1.

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Notice of Alleged Safety or Health Hazards

U.S. Department of Labor
Occupational Safety and Health Administration



MOD Date:

1. Complaint Number

2. Employer Name

3. Site Location (Street, City, State, ZIP)

4. Mailing Address (if different) (Street, City, State, ZIP)

5. Management Official

6. Telephone Number

7. Type of Business

8. Hazard Description. Describe briefly the hazard(s) which you believe exist. Include the approximate number of employees exposed to or threatened by each hazard: _____

hazard. This constitutes a "formal complaint" as that term is defined by OSHA.¹ By law, all complaints meeting the requirements for a formal complaint must be investigated.² This formal complaint is brought under and pursuant to the "general duty clause" of the OSH Act³ which requires that "each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

to cause death or serious physical harm to his employees. Complainant alleges he or she is being exposed, in violation to the general duty clause of the OSH Act, to levels of chemicals known as secondhand tobacco smoke or Environmental Tobacco Smoke (ETS) found by the Environmental Protection Agency (EPA), National Institute for Occupational Safety and Health (NIOSH), U.S. Public Health Service (USPHS), National Research Council of the National Academy of Sciences, National Cancer Institute, International Agency for Cancer Research (IACR), World Health Organization (WHO), American Medical Association, American Cancer Society, and the American Lung Association to cause lung cancer (and deaths from lung cancer), as well as numerous other health hazards, even in otherwise healthy adults — and thus is likely to cause death or serious physical harm to employees, including complainant.

This complaint further alleges that this forced exposure to a substance the EPA has classified as an "Group A Carcinogen" (in the same category as benzene, asbestos, and arsenic),⁴ and NIOSH has classified as a "potential occupational carcinogen,"⁵ substantially exceeds the official exposure recommendations of the U.S. Public Health Service, and the official federal guidelines for exposure to ETS promulgated by the EPA⁶ and NIOSH.⁷ Both require that, if any smoking is permitted in an indoor work area, it be restricted to separate rooms which are individually ventilated and are negatively pressurized.

Complainant also alleges that exposure to ETS is a "recognized hazard," as that term is defined by OSHA,⁸ because it is a condition which by common knowledge is hazardous (see above findings), and is detectable by means of the senses — and that complainant has clearly detected the exposure by smelling the distinct odor of ETS and/or by seeing the particles of ETS in the air.

NOTES: [1] "To meet the formality requirements outlined in Section 8(f) of the Act and in 29 CFR 1903.11, a complaint shall: (1) Be reduced to writing either on a Notice of Alleged Safety or Health Hazards (OSHA-7 Form) or in a letter; (2) Allege that an imminent danger or a violation threatening physical harm (i.e., a hazard covered by a standard or by the general duty clause) exists in the workplace; (3) Set forth with reasonable particularity the grounds upon which it is based. This does not mean that the complaint must specify a particular standard; it need only specify a condition or practice that is hazardous and, if uncommon, why it is hazardous; and (4) Be signed by at least one employee or employee representative." Chapter IX – Complaints and Referrals, A.2.d., OSHA Field Operations Manual at 201 (7-29-92). ■ [2] Chapter IX – Complaints and Referrals, A.7., OSHA Field Operations Manual at 203 (7-29-92). ■ [3] 29 USC § 654(a)(1). ■ [4] "Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders," EPA/600/6-93/006F (1993). ■ [5] "Environmental Tobacco Smoke in the Workplace," Pub. 91-108. ■ [6] "Secondhand Smoke," 402-F-004, July 1993. ■ [7] "Environmental Tobacco Smoke in the Workplace," Pub. 91-108. ■ [8] Guide to OSHA's General Industry Standards, Ch. 12, OSHA 29 CFR 1910 (2002). ■ [9] OSHA 1252, as amended by 29 CFR 1910.141. ■ [10] 29 CFR 1910.141. ■ [11] 29 CFR 1910.141. ■ [12] 29 CFR 1910.141.

Consolidated Engineering Co., 12 OSHA/RC 490 (1974) 2 OSCH 1253, see generally 6 Am Jur 2d Plant and Job Safety § 36.

[For Additional Citations and Information, write or call Action on Smoking and Health (ASH), 2013 H St., N.W., Wash. D.C. 20006, (202) 659-4310.]
COMPLAINANT: Add below in your own words additional details about the type, amount, and circumstances of exposure, any immediately evident health consequences, and approximate number of workers exposed (if known):

Digitized by srujanika@gmail.com

9. Hazard Location: Specify the particular building or worksite where the alleged violation exists:

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10. Has this condition been brought to the attention of (Mark "X" in all that apply):

Employer Other Government Agency (specify) _____

11. Please indicate your desire:

Do not reveal my name to the Employer. My name may be revealed to the Employer.

12. The Undersigned: (Mark "X" in one box)

Employee Federal Safety and Health Committee

Representative of Employees Other (specify) _____

... believes that a violation of an Occupational Safety or Health standard exists which is a job safety or health hazard at the establishment named on this form.

13. Complainant Name (Type or print name)

14. Telephone Number

15. Address (Street, City, State, ZIP):

16. Signature:

17. Date:

18. If you are an authorized representative of employees affected by this complaint, please state the name of the organization that you represent and your title:

Organization Name: _____ Your Title: _____

OFFICIAL USE ONLY

19. Reporting ID 20. Previous Activity? Yes No
If Yes, enter Type: _____ Number: _____

21. Optional Complaint Number

Identification 22. Establishment Name Change? 23. Site Address Change? 24. Employer ID (State's option) _____ 25. City Code _____ 26. County Code _____

Receipt Information 27. Received by: _____ 28. Send OSHA-7? Yes No 29. Date _____ 30. Time AM _____ PM _____ 31. Supervisor(s) Assigned: a. _____ b. _____

Industry & Ownership 32. Primary SIC: _____ 33. Ownership (Mark "X" in one box):
a. Private Sector b. Local Government c. State Government d. Federal Agency/Code _____

Complaint Evaluation 34. Evaluated by: _____ 35. Subject and Severity:
Discrimination
Imminent Danger _____ Serious _____ Other _____

36. Is This a Valid Complaint?
 Yes No

37. Formality
 Formal Nonformal

38. Migrant Farmworker Camp

Complaint Action 39. Send Letter:
a. No Inspection — for Invalid Complaints
 Too Vague or Unsubstantiated
 Recent Inspection or Objective Evidence
(Date of Inspection: _____)
 Not in OSHA's Jurisdiction

- c. OSHA-7 for Signature With Letter
 Complete or Partial
d. Nonformal Complaint Notification to Employer
 Complainant Notified Explanation of 11(c)
e. Complainant Notification With Letter d
 Name Not Revealed Explanation of 11(c)
f. Acknowledgement to Complainant (Optional)
g. Other (specify) _____

40. Date Letter Sent: _____ 41. Date Response Due (For letters c or d): _____

42. Inspection Planned? If Yes, Priority:
 Yes No

If No:
Reason: _____

43. Transfer to (Name): _____ 44. Transfer Date: _____

45. Transfer to (Category):

c. Other Federal Agency/Code _____

a. Federal OSHA/Reporting ID: _____

d. State/Local Government

b. State OSH/Reporting ID: _____

e. Other: _____

46. Optional Information

Type	ID	Value	Type	ID	Value

47. Total Entries

Close Complaint 48. Close Complaint

49. Comments:

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FILING YOUR COMPLAINT WITH OSHA ABOUT WORKPLACE SMOKING

Please read this side of the sheet FIRST.

Filing complaints with OSHA can help limit smoking in your workplace. It can also encourage OSHA to issue a general rule limiting smoking in all workplaces, including restaurants, stores, and other public places.

This page provides general information about filing OSHA smoking complaints. The next page provides more specific information about filling out the enclosed OSHA complaint form, and mailing it to ASH for filing.

Q. WHO IS ELIGIBLE TO FILE COMPLAINTS WITH OSHA?

A. With a few exceptions, employees may file complaints with the Occupational Safety and Health Administration (OSHA) if they believe they are exposed to chemicals likely to cause death or serious physical harm. The exceptions include government employees, and individuals (like persons working in mines) subject to special safety rules.

Q. WHO SHOULD FILE A SMOKING COMPLAINT WITH OSHA?

A. Any worker eligible to file an OSHA complaint (see above) who is exposed to Environmental Tobacco Smoke (ETS) anywhere in the workplace and who believes that it may cause lung cancer or other serious diseases should file a complaint to protect his or her own health.

Q. IS FILING A COMPLAINT DIFFICULT?

A. No. ASH has added to the OSHA complaint form the legal and technical language we believe is appropriate under the circumstances. You may adopt any or all of this language without the need to recopy it. Filling out the remainder of the form is not difficult, and the other side of this sheet provides additional assistance and instructions.

Q. CAN I FILE THE COMPLAINT ANONYMOUSLY?

A. Yes, by checking a box on the form which says "Do not reveal my name to the Employer." If you check this box in response to Question 11, federal law provides that your name shall not appear in the copy provided to the employer "or on any record published, released, or made available pursuant to section (g) of [29 U.S.C. § 651]."

Q. WHERE OR WITH WHOM DO I FILE MY COMPLAINT?

A. Because the office where the complaint must be filed depends in a complicated way on the address of your employer, you can simply send your complaint to ASH. ASH will determine which of the more than 100 offices should receive it, and send it to that office.

Q. WILL ASH REPRESENT ME OR ACT AS MY ATTORNEY?

A. No. ASH cannot represent the hundreds or thousands of individual nonsmokers who may wish to file complaints, but such representation is not necessary. Any employee may file a complaint with OSHA, and OSHA's procedures are geared to processing complaints filed by workers who do not have attorneys.

Q. WHAT WILL OSHA DO WITH MY COMPLAINT?

A. OSHA employees may call you for additional information, make an inspection of the premises, and/or seek to negotiate informally with your employer to limit smoking. It is also possible that OSHA may refuse to act on the complaint, a decision which will probably strengthen ASH's law suit in the U.S. Court of Appeals seeking to force OSHA to take action regarding workplace smoking.

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FILING YOUR COMPLAINT WITH OSHA ABOUT WORKPLACE SMOKING
Please read this side of the sheet only after reading the other side.

OSHA instructions state that a worker should "complete items 2 through 18 [of the form] as accurately and completely as possible. Describe each hazard you think exists in as much detail as you can. If the hazards described in your complaint are not all in the same area, please identify where each hazard can be found in the worksite." ASH suggests that you fill out the form with a sharp-pointed pen, print your answers clearly, and be sure to answer each question 2-17. Do NOT put anything in the space for question 1 or questions 18-49, nor in the box marked "MOD Date."

Question 2 "Employer Name": the name by which your company is generally known; for example, how it is listed in the telephone book or on its own stationary

Question 3 "Site Location": the street address of your workplace, plus information like floor, department, or section of the building if relevant

Question 5 "Management Official": the name of any person or persons you know who exercise some management control or authority there

Question 7 "Type of Business": a general description, such as "insurance office," "restaurant," "bank," "school," "factory," "beauty parlor," "bowling alley," etc.

Question 8 "Hazard Description": To help satisfy OSHA's requirements, ASH has added legal and technical language which we believe is applicable to virtually all workers exposed to ETS. Cross out any which you feel is NOT applicable to your own situation. Then add more specific information about the type, amount and circumstances of your exposure, any immediately evident health consequences, and the approximate number of workers exposed (if known). The following are brief samples of the kind of information you may wish to add:

"Approximately 10 nonsmokers are subjected to smoke from three smokers in an office; complainant suffers sinus attacks." "I am forced to breath dense smoke in the restroom and it makes me nauseous." "About 50 employees are exposed to smoke in hallway, but there are no immediate observable symptoms." "Smoke drifts into my office from the smoking room, and several of us smell it."

Question 10: check the appropriate box only if you know that the problem has been brought to the attention of the employer or a government agency

Question 11: check the FIRST box if you do NOT want your name revealed to your employer

Question 12: If you are filing the complaint on behalf of yourself, you should check the first box marked "Employee"

Question 18: DO NOT PUT ANYTHING in the space for this question

Once you have completed the form and signed and dated it, please return the ORIGINAL in the enclosed courtesy envelope by December 1st. ASH will forward valid complaints to the appropriate office. There is no cost or other obligation for this service, and ASH is NOT acting as your attorney or authorized representative.

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SPECIAL CONTRIBUTION

YES! I want to help ASH fight to eliminate smoking in the workplace. I am sending my contribution of:

\$100

\$40

\$30

Other _____



Card# _____

Exp. Date: _____

Signature: _____

Please return this form, along with your check (if applicable) in the enclosed business reply envelope.

Return your completed OSHA complaint form separately in the courtesy envelope marked ASH - OSHA COMPLAINT.

*Action on Smoking and Health
2013 H Street N.W.
Washington, D.C. 20006*

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